

# **EXHIBIT WW**



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# Transcript of Nancy Dunham

**Date:** April 17, 2023

**Case:** Strickland -v- United States of America, et al.

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FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION

-----X  
CARYN DEVINS STRICKLAND, :  
Plaintiff, :  
v. : Case No.  
UNITED STATES OF AMERICA, : 1:20CV66  
et al., :  
Defendants.:

-----X

Deposition of NANCY DUNHAM  
Conducted Virtually  
Monday, April 17, 2023  
2:08 p.m. EST

Job No.: 488113  
Pages: 1 - 202  
Reported by: Marney Alena Mederos, RPR, CRR

1           Deposition of NANCY DUNHAM, conducted  
2           virtually.

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6           Pursuant to subpoena and notice, before  
7           Marney Alena Mederos, Registered Professional  
8           Reporter, Certified Realtime Reporter, and  
9           Notary Public in and for the State of Maryland.

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A P P E A R A N C E S

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JEANNIE SUK GERSEN, ESQUIRE  
COOPER STRICKLAND, ESQUIRE  
OLIVIA WARREN, ESQUIRE  
KRISTIN MANNHERZ, ESQUIRE  
PHILIP HERTZ

Transcript of Nancy Dunham  
Conducted on April 17, 2023

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(Attached to transcript)

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P R O C E E D I N G S

Whereupon,

NANCY DUNHAM

being first duly sworn or affirmed to testify to  
the truth, the whole truth, and nothing but the  
truth, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR DEFENDANTS

BY MS. McMAHON:

Q Good afternoon -- or good morning to  
you, Ms. Dunham --

A Good morning.

Q -- from the East Coast.

I mentioned this earlier. My name is  
Madeline McMahon. You can call me Maddie. I'm an  
attorney with the U.S. Department of Justice, and  
I represent the Defendants in the Strickland vs.  
U.S. matter that's currently pending in the  
Western District of North Carolina.

Could you state and spell your name for  
the record, please?

A Nancy Dunham, N-A-N-C-Y, Dunham,  
D-U-N-H-A-M.

Q Are you represented by counsel?

A I am not.

Q Have you ever had your deposition

1 taken?

2 A I don't believe I have. I have  
3 provided testimony through written declarations,  
4 but I don't believe I've ever had my deposition  
5 taken.

6 Q But you have taken them, so you're  
7 familiar with --

8 A I -- I have taken many, and things have  
9 changed a lot. We used to be all in one room.

10 Q Sometimes we still are, but sometimes  
11 when -- when the deponent is in Hawaii, we don't  
12 get so lucky.

13 So I'm going to try to take a break  
14 every 45 minutes or so, but please let me know if  
15 you need a break, and we will be happy to do that,  
16 and I'll let you know from my end as well.

17 A Okay.

18 Q I will be asking you a series of  
19 questions to which you are under oath to provide  
20 full and complete answers.

21 If you do not understand any question  
22 that I ask you, just please let me know before you  
23 respond, and I will explain or rephrase the  
24 question.

25 You also just took an oath.



1                   Do you understand the nature of the  
2                   oath?

3           A        I do.

4           Q        It requires you to fully answer each  
5                   question to the extent you can, and if you're not  
6                   sure of an answer or don't have a complete answer,  
7                   you still must answer the question to the extent  
8                   you can.

9                   Do you understand this?

10          A        I do.

11          Q        And as you can see, the court reporter  
12                   here is recording all that is said, but because  
13                   she can only record our words, please answer each  
14                   question with a verbal response.

15          A        I understand.

16          Q        It's also -- as we mentioned earlier,  
17                   it's very important that we don't talk over each  
18                   other, and I'll ask you to allow me to fully  
19                   answer -- to fully ask my question before you give  
20                   your answer, and I'll let you answer it before I  
21                   ask my next question.

22                   Is that okay?

23          A        Yes.

24          Q        Have you taken or do you intend to take  
25                   any medication that may affect your ability to

1 testify accurately or honestly?

2 A No.

3 Q Is there any other reason why you  
4 cannot provide your best and most accurate  
5 testimony today?

6 A No.

7 I would say that I am testifying  
8 100 percent from my memory. Since I'm not  
9 employed any longer, I don't have access to those  
10 records, and I have not, to my knowledge,  
11 discussed the case with anyone, including the  
12 Plaintiff or anyone involved in the case, other  
13 than my e-mail correspondence with the DOJ lawyer  
14 that contacted me about the deposition.

15 And I -- I did get one e-mail from  
16 Charlene Hardy, from the AO's Office of General  
17 Counsel, informing me about the case. She sent  
18 me, I think, the Fourth Circuit decision that  
19 allowed the Plaintiff to move forward, and -- so  
20 that is -- that is it.

21 I -- I have not reviewed any documents  
22 as I normally would have done were I still  
23 employed, and it is -- I think it has been almost  
24 five years since I left the AO.

25 Q Just so I understand, you mean in

1 preparation for this deposition today, you didn't  
2 do anything to prepare?

3 A I did not.

4 Q So you didn't talk to any of  
5 Plaintiff's attorneys to prepare for this  
6 deposition?

7 A I did not.

8 Q Okay. A couple more quick questions.  
9 Do you plan to read and sign the  
10 deposition after we're finished today?

11 A I'm sorry, ask that again.

12 Q Do you plan to read and sign the  
13 deposition after we're finished?

14 A Yes.

15 Q Okay. And as I'm sure you know from  
16 your experience, from time to time, counsel may  
17 object.

18 After his or her objection -- I think  
19 it's Professor Gersen who's on -- who may object  
20 today -- I'm going to ask you to go ahead and  
21 answer the question until he instructs you not to.

22 Do you understand?

23 A I do.

24 Q So I'd like to start by getting a  
25 little bit of background information about you.

1                   What's your date of birth?

2           A       July 24th, 1955.

3           Q       Where do you currently live?

4           A       I live in Kamuela, Hawaii, on the big  
5 island.

6           Q       And where did you go to college?

7           A       I went to college at the University of  
8 Michigan in Ann Arbor.

9           Q       Did you go to law school?

10          A       I did. I have a law degree from the  
11 University of Connecticut.

12          Q       And what did you do after law school?

13          A       My first job after law school was I was  
14 a teaching Fellow at Temple Law School, so I  
15 taught first-year law students, and then as that  
16 two-year fellowship progressed, I also taught a  
17 number of other classes -- law school classes to  
18 all -- all variety of law students, first-,  
19 second-, and third-year law students.

20          Q       Got it.

21                   And when -- what did you do after that?

22          A       My first job after teaching was I was a  
23 law clerk to a federal judge in the Western  
24 District of Michigan, Richard A. Enslen.

25          Q       And when did you join the AO?

1           A       I started working for the AO in 2014.

2           Q       And when did you leave the AO?

3           A       I left the AO at the end of May 2019.

4                   Actually, I worked a full day on a

5 Wednesday, and then we flew to Hawaii on a

6 Thursday, and we've been here ever since.

7           Q       And you're retired now; is that right?

8           A       I am retired.

9           Q       What was your job at the AO?

10          A       I was the fair employment practices

11 officer, and that's kind of a wordy name. It

12 comes from a Truman-level executive order for

13 employment practices.

14                   Typically, in the executive branch, the

15 title would have been something like Director of

16 Equal Employment Opportunity or Civil Rights

17 Director.

18          Q       Had you worked in any -- any roles

19 prior that involved similar duties, like relating

20 to fair employment practices or equal opportunity?

21          A       Yes. Quite a few of my jobs were

22 exactly that.

23                   I -- I both represented plaintiffs in a

24 law firm in D.C. for about a year. I worked for

25 the Equal Employment Opportunity Commission both

1 as advisor to an EEOC commissioner, and I worked  
2 in the Office of Legal Counsel representing EEOC  
3 employees, including administrative judges that  
4 were sued by plaintiffs.

5 And then I worked mainly in defensive  
6 positions for several executive agencies,  
7 including EPA, the Department of Commerce.

8 At the Department of Transportation, I  
9 was a civil rights advisor to the Secretary of  
10 Transportation, and then I also practiced for  
11 about two years at EPA as national security  
12 lawyer.

13 So I had a top secret SEI clearance,  
14 and I did very little employment law/civil rights  
15 advising at that time, but the vast majority of my  
16 35-year career has involved working for either the  
17 federal courts or a federal executive agency, and  
18 virtually all of it was related to the law on  
19 employment discrimination and civil rights.

20 Q When you say that you worked in a  
21 defensive capacity before, what do you mean by  
22 that?

23 A I worked in the Offices of General  
24 Counsel for the Department of Commerce, for the  
25 Department of -- for the Environmental Protection

1 Agency, and for a short time at EEOC. I worked in  
2 their Office of Legal Counsel.

3 So I have -- I've been on both sides.  
4 I've been a plaintiffs' lawyer, class-action  
5 lawyer in the District of Columbia, and then I've  
6 been a defensive lawyer as well working sometimes  
7 with independent litigating authority when I was  
8 with the EEOC, but I virtually always worked with  
9 an AUSA when I -- when I represented EPA,  
10 Department of Commerce.

11 Q Did you work as the fair employment  
12 practices officer the whole time you were at the  
13 AO?

14 A Yes. That was my sole job.

15 Q And that job -- that -- the job -- the  
16 position had been around since you said  
17 President Truman? It was an old position?

18 A No. That's -- the -- the wording fair  
19 employment practices came from a Truman-era  
20 executive order.

21 The position was created in 2014, and I  
22 was the first person to hold that position at an  
23 executive level. It had been split off in --  
24 in -- in various -- held by various people, and  
25 before I came, they consolidated the duties and

1 made it an executive-level position.

2 Q What were the duties?

3 A Well, first of all, the -- I served as  
4 the advisor to the deputy director and the  
5 director on civil rights matters.

6 We also -- my office provided advice to  
7 the various courts across the country except for  
8 the Supreme Court, and within the AO, we not only  
9 provided advice, but we processed the complaints  
10 of AO employees.

11 So we were like a -- in essence, a  
12 civil rights processing office, as well as we did  
13 the -- the celebration events for -- for, say,  
14 Women's History Month and African-American History  
15 Month, and so forth.

16 Q When you say that you processed the  
17 complaints of AO employees, what do you mean by  
18 that?

19 A Well, the office actually was the  
20 neutral adjudicator of those complaints, so we  
21 accepted the complaints. My office did -- first  
22 of all, did EEO counseling before the formal  
23 complaint was filed, and then we arranged for  
24 hearings for AO employees who brought  
25 discrimination complaints, and then continued to



1 process them.

2 Certain AO employees had right to file  
3 a civil action, most did not, and so to the extent  
4 that someone had a right to go into federal court,  
5 we sent that complaint -- we processed the  
6 complaint until the point that there was a final  
7 decision by the AO director, and then it went to  
8 federal court and we lost jurisdiction.

9 But most of the cases stopped after  
10 final decision by the AO director. And, again,  
11 that was a --

12 Q You said that -- go ahead.

13 A -- very different process than -- than  
14 the judiciary employees. The judiciary employees  
15 had a separate process, and it was mainly carried  
16 out within the Court that held jurisdiction.

17 Q By "held jurisdiction," do you mean the  
18 Court that was overseeing their -- the judiciary  
19 employees?

20 For instance, like, if you're employed  
21 by District of D.C., it would be overseen by  
22 District of D.C. or D.C. Circuit?

23 A Yes.

24 Q Okay. And with respect to those  
25 judiciary employees, what was your role?

1           A       Well, I -- I -- I typically would not  
2 get involved in your day-to-day judiciary employee  
3 case. I had a staff of lawyers that worked with  
4 the judicial offices. We collected discrimination  
5 complaint information and published it yearly.

6                   We -- we would occasionally -- I would  
7 occasionally get a question from a senior  
8 judiciary official or a judge, and that was not  
9 the norm. It was when something really was either  
10 complicated or needed -- you know, needed someone  
11 senior to look at it.

12                   But my office -- the lawyers in my  
13 office would take questions really on a daily  
14 basis from court employees who were processing  
15 their own complaints, and we worked on civil  
16 rights initiatives.

17                   We had a model intern program that --  
18 that started in the Middle District of Alabama  
19 with Judge Myron Thompson, and so we did both  
20 civil rights initiatives, and we did -- we advised  
21 the Courts on the processing of their own  
22 complaints, and then we published that complaint  
23 information on a yearly basis.

24           Q       And were you permitted to give legal  
25 advice to either Court employees or employees

1 within the AO?

2 A Well, I was a neutral, so I did not  
3 represent the AO or the judiciary, and I also did  
4 not represent plaintiffs or employees.

5 But in the course of my job, I did rely  
6 on my -- my legal skills, and I did give legal  
7 advice and discussed legal issues with the Office  
8 of General Counsel, with my bosses who were the  
9 deputy director and the director of the AO.

10 Q So I know you mentioned that you had  
11 worked in many different roles relating to  
12 employment law in several different capacities,  
13 and in 2014 you joined the AO as the fair  
14 employment practices officer.

15 Did you receive any training when you  
16 joined the AO to be the fair employment practices  
17 officer?

18 A I believe I did, because what I needed  
19 to know as a new executive officer was how the  
20 AO functioned, and, you know, what their role was  
21 vis-à-vis AO employees versus judiciary employees.

22 So, yes, I recall going to training  
23 when I started, and then periodically through my  
24 tenure, I would attend training on substantive  
25 matters that I was interested in.

1           Q       Can you be more specific about the  
2       training you received when you started?

3           A       Yes. The -- the AO had several offices  
4       that did training for new employees, so I attended  
5       those. They tended to be more generic, you know,  
6       about how the AO functioned and what the roles  
7       were and how the various executive officers worked  
8       together.

9                    I remember that the former deputy  
10       director took me around to every office, and I  
11       talked with every office about, you know, what  
12       their office did and how they functioned.

13                   It's really a fairly comprehensive  
14       body. It -- you know, it -- there was a lot more  
15       to the AO than I knew when I had applied for the  
16       job.

17          Q       Definitely.

18                   And in terms of the subsequent  
19       training, was that -- you know, you mentioned that  
20       it was in substantive areas.

21                   Would one of those areas be employment  
22       law, or what -- can you give us an example of  
23       that?

24          A       You know, I can't actually remember,  
25       and -- specifically getting training in employment

1 law, but I know that I was very -- I was very  
2 interested in that general area, employment law,  
3 employment litigation, civil rights, and so I know  
4 that I -- if I didn't go to an outside conference,  
5 I know that I went to some of the conferences that  
6 were held in -- in the various judicial offices.

7 I also participated in training on a  
8 regular basis. I was a speaker at a number of  
9 training for AO employees and for judicial  
10 employees.

11 Q So you also mention that you left the  
12 AO in 2019.

13 Why did you leave?

14 A My husband had practiced law for  
15 40 years, and he's a couple years older than I am  
16 and was in a position to retire, and he wanted --  
17 we both wanted to move away from D.C. and to  
18 move -- and we had been looking in Hawaii for  
19 five years, and we sort of found our dream house,  
20 and we decided to retire.

21 Q Did you have any views on the way that  
22 the AO was approaching how they were handling  
23 misconduct claims or anything of that nature?

24 A Yes. Specifically, when I worked with  
25 the Office of General Counsel, we would often get

1 involved with, say, a misconduct claim. I would  
2 be looking at it from the perspective of a civil  
3 rights neutral. The Office of General Counsel  
4 would be looking at it as a -- as a defense  
5 counsel for a manager.

6 So, yes, I -- I definitely worked on  
7 individual misconduct matters where there were  
8 legal issues that related to civil rights, and I  
9 can give you one example as a hypothetical.

10 If, for example, you had an employee  
11 who was being terminated for workplace -- the  
12 inability to do the job at issue, that can raise a  
13 civil rights issue in that -- let's say the  
14 employee had early-onset Alzheimer -- Alzheimer's.

15 That -- the way that would have been  
16 resolved would have been different, and that would  
17 be my role, to advise on what to do with that --  
18 that Alzheimer's aspect of the misconduct -- or  
19 not misconduct, I'm sorry -- inability to do the  
20 job.

21 Q When you said that the way it was  
22 handled is different, what do you mean by that?

23 A Well, you wouldn't typically, or you'd  
24 be in violation of the civil rights laws, fire  
25 somebody for the inability to do the job, a

1 performance-based action, if you learned that it  
2 was Alzheimer's that was causing the inability to  
3 do the job.

4 Typically, what you would do is process  
5 it as a disability retirement claim.

6 Q I see.

7 And you generally agreed with the way  
8 that the AO would handle a situation like that?

9 A Can you be more specific? Are you  
10 talking about the AO managers, the Office of  
11 General Counsel?

12 Q Yeah. I mean the approach that they  
13 are taking in not necessarily adjudicating a claim  
14 like that, because I realize it might not get to  
15 that stage, but just the way that they approach  
16 potential claims, like the example you gave.

17 A I would say in the great -- the vast  
18 majority of cases, I would be in agreement with  
19 what the Office of General Counsel and managers  
20 were doing. That was not always the case, and  
21 some of it depended on who the lawyer was.

22 I mean, I worked -- I had a very good  
23 working relationship with Sheryl Walter, the  
24 former general counsel, and Bill Meyers. I would  
25 say it was as good a relationship as I've ever had

1 when you're both serving different purposes.

2 But there were times when I disagreed  
3 with either a lawyer on their staff or what a  
4 manager was doing in a particular case, and  
5 that -- that is when I was able often to work out  
6 a solution, and, you know, that -- that was the  
7 really wonderful part of the job, is there were  
8 times when I thought that the civil rights laws  
9 were -- were not being followed, and so I was  
10 able, because of my relationship with the general  
11 counsel's office and senior managers and the  
12 deputy director and director of the AO, to make a  
13 difference in how something was handled.

14 Q Going back to what you mentioned  
15 earlier about how your role was one as --

16 You said as neutral?

17 A Right.

18 Q -- maybe a neutral advisor, can you be  
19 more specific what you mean by "neutral"?

20 A Well, again, I represented the -- the  
21 civil rights office, and our role was to provide  
22 advice to AO managers and judiciary managers and  
23 let them know what the civil rights implications  
24 were. My job was not to defend the agency or  
25 defend the judiciary, it was purely advisory, and



1 so we -- we worked very hard at being neutral.

2 EEOC has management directives. Now,  
3 that doesn't apply precisely and technically to  
4 the judiciary, but -- but Management Directive 110  
5 talks about the different roles within an  
6 executive agency.

7 The civil rights office is supposed to  
8 be completely independent from the defensive  
9 branch of the agency, the Office of General  
10 Counsel. And so we were careful to follow that  
11 very good guidance on keeping -- keeping those  
12 functions separate.

13 Q Would you -- would you say that you  
14 mostly advised management and members of OGC, or  
15 would you also give advice regularly to employees  
16 or employees who were bringing potential wrongful  
17 conduct claims?

18 A I would give advice to AO managers,  
19 judiciary managers, judges, to -- to my superiors,  
20 to other executive officers on what the civil  
21 rights laws said about their particular situation,  
22 but I -- my role was not to defend the AO or to  
23 defend the judiciary. It was to provide a  
24 perspective of a neutral civil rights office.

25 Q And you also would give advice to

1 employees of the judiciary and of the AO?

2 A I often had -- we often as an office  
3 had employees come in and tell us their story,  
4 and, again, we would -- we would tell them what  
5 the law was, we would explain the -- the judi- --  
6 the processing of complaints, and give them  
7 information that they could use to make decisions  
8 about how to proceed.

9 Again, we didn't represent the  
10 plaintiffs or the employees. Our job was to give  
11 them information to fully decide how they wanted  
12 to proceed.

13 Q Would you give employees legal advice?

14 A No, not in that sense, not in the sense  
15 of providing legal advice and representing that  
16 employee.

17 What we did is give them the neutral  
18 view with keeping in mind that we didn't represent  
19 management and we didn't represent employees. We  
20 told them what the law said and what the processes  
21 were.

22 Q So I'd like to get into some of the  
23 facts in the case, and I know, Ms. Dunham, you  
24 mentioned that you didn't prepare anything in  
25 advance, so if there's anything that would refresh

1 your recollection, let me know.

2 A Okay.

3 Q But if you can remember back -- I know  
4 this is a couple years ago, do you remember when  
5 you first encountered the Plaintiff?

6 A I do. I remember, because it was not  
7 your usual situation.

8 I received a phone call -- and I  
9 believe it was in late 2018, so that was six years  
10 ago -- from a senior -- a senior member of the  
11 AO staff who had, I believe, just retired. She  
12 was one of the three department heads.

13 I knew her very well, and she had  
14 pre- -- before I was hired, she had previously  
15 served in an EEO role and had advised the director  
16 and the deputy director. When I came on board,  
17 she relinquished those duties.

18 So that was -- her name was Laura  
19 Minor, and she called me and said will you talk to  
20 an employee -- a judicial employee in one of our  
21 districts who has some questions about sexual  
22 harassment? I have talked to her, and I think she  
23 needs to talk to you, and I said of course.

24 And she said, now, she may not want to  
25 give you her name, so she will call you and tell

1     you that she is the employee that talked to me,  
2     and if you could talk to her about her situation,  
3     I would really appreciate it.

4             And that's how I first talked to the  
5     Plaintiff on the phone. We had, I believe, a very  
6     long conversation, because she was very articulate  
7     and remembered facts very well, and so I think we  
8     talked the first time for maybe an hour and a  
9     half. And, again, I didn't know who she was, I  
10    didn't know where she was, and that was the first  
11    conversation.

12            Q     Just so I understand, you didn't --  
13    even the entire time you talked to her for an hour  
14    and a half, you didn't know who she was?

15            A     I didn't know her name at that time. I  
16    knew -- I knew her general employment situation.  
17    I knew that she worked for one of the public  
18    defender offices, but I didn't know which one, and  
19    I remember that I looked at the area code from her  
20    cell, and it was not -- as it turned out, it was  
21    an area code from a previous location.

22                    Like, my cellphone reads 301. Well, I  
23    no longer live in Bethesda, Maryland. So I  
24    didn't -- I did not have any personal information  
25    about her. I didn't know who she was. I didn't

1 know what her job was.

2 She told me about her background. I  
3 knew that she had clerked at the District Court  
4 level, at the Circuit Court level, and that she  
5 had been a U.S. Supreme Court Fellow at the AO.  
6 Like, I didn't know anything more than that in the  
7 beginning.

8 It -- it -- I think it took some time  
9 for her to build up trust talking to me, and I  
10 continued to talk with her about the matter on an  
11 ongoing basis until I retired.

12 Q You mentioned that you were introduced  
13 to her by Laura Minor?

14 A Yes.

15 Q And how did you know Laura Minor?

16 A Laura Minor was an AO senior manager  
17 and also had done some -- some work that related  
18 to my office before I got there.

19 So she was an EEO advisor as a  
20 tangential job duty. That was not what she did.  
21 She was an AO manager, and so she and I would  
22 often talk about civil rights matters, because she  
23 had functioned in that role before my job was  
24 created.

25 Q Did you have a previous relationship

1 with her?

2 A No, I did not know her. She was one of  
3 the people that I interviewed with. The deputy  
4 director wanted her to meet me and to give her  
5 opinion on me, and so she was one of the people  
6 that I interviewed with.

7 So I probably knew Laura for quite a  
8 few months before I was actually hired, because  
9 she was part of the interview and selection group.

10 Q Had she ever introduced you to other  
11 people or other judiciary or AO employees who had  
12 similar situations to the Plaintiff?

13 A I can't recall whether there was anyone  
14 else that she sent specifically to me. I do  
15 believe that she was -- she was knowledgeable  
16 about the various complaints that were --

17 I think we lost your video, Maddie.

18 Q Oh, did you?

19 A Oh, okay, you're back.

20 Q Sorry.

21 A Anyway, yeah, she -- I think that this  
22 was the only situation where she specifically sent  
23 someone to talk to me.

24 There was -- there was an AO case that  
25 I know that she had followed and was interested

1 in, but by the time I was hired, we pretty much  
2 resolved the case to her satisfac- -- I think to  
3 her satisfaction because I know she was worried  
4 about the case, but she did -- she was not the  
5 person who sent the plaintiff to my office. It --  
6 it was already there as a -- as a -- as a formal  
7 complaint that had been a hearing -- it had been  
8 counseled, there had been a hearing, and so forth.

9 So I think the -- I think, if my  
10 recollection is correct, that this particular  
11 situation was the only person that she sent to me  
12 personally.

13 Q What did Laura tell you?

14 I know that you didn't know the  
15 Plaintiff's name or what district she worked in,  
16 but what did Laura -- what did Laura tell you  
17 about Plaintiff before you spoke to her on the  
18 phone?

19 A Well, she told me that -- and I hate to  
20 keep calling her Plaintiff, because, you know, her  
21 name is Caryn, and -- and I did get -- I got to  
22 know her very well. She -- I was told by Laura  
23 that she was a rising star in the federal  
24 judiciary, and I could see that just based on her  
25 work history.

1           Laura had worked with her when she was  
2           a U.S. Supreme Court Fellow at the AO, and so she  
3           told me a little bit about, you know, her  
4           credentials and, you know, her -- her work ethics,  
5           and -- and other things that you would tell  
6           someone about if -- if you were going to interview  
7           them.

8           So I did -- I did know that she was  
9           well-respected in the district where she worked  
10          but also by the AO people that she had come in  
11          contact with as a U.S. Supreme Court Fellow.

12          Q       Did Laura give you any specifics about  
13          what the Plaintiff was alleging or anything  
14          specific about the situation that she wanted to  
15          call you for advice about?

16          A       She said only that she wanted to call  
17          me and talk to me about sexual harassment.

18                 She didn't tell me -- she didn't give  
19          me any details that I can recall about her  
20          situation, but just that she wanted to discuss  
21          sexual harassment.

22          Q       And I know you mentioned that you  
23          remember talking to Caryn for the first time in  
24          2018.

25                 Do you remember --



1           A       I believe -- I believe it was late  
2   2018, and I took -- I -- you know, I took notes,  
3   so I -- I, you know, documented the conversation  
4   without a lot of specifics, but I -- you know, I  
5   know that there's a record that exists that would  
6   say precisely when I talked to her for the first  
7   time, but my memory tells me it was late 2018.

8                   (Discussion off the record.)

9   BY MS. McMAHON:

10          Q       So if I -- if I told you that the  
11   conversation was around July of 2018, would that  
12   track with what you remember?

13          A       It would.

14          Q       Okay. So you had this phone call with  
15   Plaintiff -- or with Caryn on July -- in July of  
16   2018.

17                   And can you give us a little more  
18   detail about what you discussed besides for her  
19   personal characteristics? Did she talk about --  
20   did she tell you about what her perception of the  
21   sexual harassment was?

22          A       She did. She -- she provided me --  
23   again, she had a very good recollection of facts.  
24   When I asked her questions, she was able to fully  
25   answer the questions, and by the time that first

1 phone call was over, I had a very good sense of  
2 what was going on.

3 Q What did she say about her allegations?

4 A Again, I'm -- I'm looking back, like,  
5 five, six years, but she was uncomfortable -- made  
6 uncomfortable by one of her senior managers who at  
7 the time she was hired made some public statements  
8 about how hot she was and -- and, again, this is  
9 what she told me in detail -- and how he was  
10 clearly interested in her either romantically or  
11 sexually.

12 I don't believe -- I know that she was  
13 in a relationship. I don't think she was married  
14 at that time. I know that the individual at issue  
15 was ten years older than she was and married, but  
16 that immediately concerned me, and so she -- she  
17 told me about the situation, she told me about his  
18 desire to control her, which is very common in  
19 this type of situation, and wanted to mentor her.

20 So when I heard her story for the first  
21 time, her -- her -- her situation, it was  
22 concerning. I felt like I wanted to know more  
23 about it, but it concerned me.

24 Q You mentioned that she -- that Caryn  
25 told you he was romantically interested in her.

1                   Did she give you specific examples of  
2                   why she thought that?

3           A       Well, he wanted to spend a lot of time  
4                   with her. He made comments, I believe, to other  
5                   employees about how hot she was, and he sort of  
6                   self-appointed himself as her mentor and would,  
7                   again, do a number of things that when we  
8                   discussed the case at the AO we were concerned  
9                   about because it -- it looked like he wanted to  
10                  control her, which is very common.

11          Q       What were those other number of things  
12                   besides for the comments to others saying that she  
13                   was hot?

14          A       I remember that she had a meeting that  
15                   she felt an obligation to attend, and he had  
16                   something that he wanted her to do, and so he sort  
17                   of blew up and was very angry, and -- and I  
18                   remember telling that to some of the people at the  
19                   AO, and -- and they -- their comment was, well,  
20                   that's a very bad sign because this is what we see  
21                   in a sexual harassment case, the desire to  
22                   control.

23          Q       So besides for him telling others that  
24                   she's hot and then blowing up at her at the  
25                   meeting, was there anything else that she

1 mentioned that would indicate he was interested in  
2 her romantically?

3 A Well, he -- he asked her, I think,  
4 repeatedly -- I -- I think it goes beyond one  
5 time -- to go out for drinks after work, he would  
6 show up in the late evening in her workplace and  
7 offer her rides home, things that were a little  
8 atypical given the -- the parameters of their  
9 relationship.

10 Q And if I -- if I told you this -- that  
11 the man was named J.P. Davis, would that ring a  
12 bell?

13 A That does ring a bell. I couldn't have  
14 told you his name, but yeah.

15 Q Had you met J.P. Davis before?

16 A Never.

17 Q Had you contacted him or talked to him  
18 throughout this process?

19 A Never.

20 Q So at that point, at the time of this  
21 initial conversation, all you knew about the  
22 allegations were what was based on what Caryn had  
23 told you during that call? It wasn't from Laura  
24 Minor or anyone else?

25 A It was primarily at that time of the

1 first call from what Caryn had said.

2 I also then talked to other officials  
3 at the AO who were familiar with the situation,  
4 and so I did get some additional facts, especially  
5 as the months went on, from others who, I guess,  
6 did talk to Mr. Davis or to others in that  
7 district and learned a bit about how that office  
8 functioned.

9 Q Who else did you talk to in the AO?

10 A I believe I talked to -- let's see,  
11 what was her name?

12 All I can say conclusively is to other  
13 senior managers who had official duties related to  
14 the office where Caryn worked.

15 Q You don't remember anyone specific?

16 A I -- I can see their faces, but I -- I  
17 could not tell you their names. It's just been  
18 too long.

19 Q No problem.

20 And once -- after this initial phone  
21 call, once Caryn told you this, did you  
22 immediately go to the other AO officials to  
23 discuss this with them?

24 A I believe that I did. I may have  
25 waited for -- we -- we set up another call. I may

1 have waited till I got more information, but I was  
2 immediately concerned, and I thought it was  
3 prudent for me to advise my managers about what  
4 was going on. Now, I'm talking about primarily  
5 the deputy director at that point.

6 I later talked to the director about  
7 the matter, but initially I talked to lawyers in  
8 my office, I talked to managers who had duties  
9 related to North Carolina, and I talked to -- I  
10 felt a need to tell the deputy director what was  
11 going on.

12 This was a time when, you know, sexual  
13 harassment had hit the news, the Harvey Weinstein  
14 case, there were a number of high-profile cases  
15 that were hitting the news, and it was something  
16 that the AO was very interested in.

17 So I was asked to do training on sexual  
18 harassment, which I did, and we -- we started to  
19 collect more information about allegations that  
20 had occurred throughout the judiciary. There was  
21 a Ninth Circuit judge that was of some concern,  
22 and there was a lawsuit that followed from that.

23 So it -- it was newsworthy at that  
24 time, and so I realized there was, you know, some  
25 potential risk for the judiciary because of all

1       that publicity about other cases.

2               Q       Can you describe what you told those  
3       AO officials about the sexual harassment? What --  
4       what type of information were you passing on?

5               A       Well, I didn't tell them a lot because,  
6       first of all, it was important for me to protect  
7       her privacy, so I talked about it in generalities.  
8       I said judicial employee. I may have told the --  
9       the region.

10              I probably did tell the deputy director  
11      of the region, because she had worked in the field  
12      before she was the deputy director, and she knew a  
13      lot of people that were involved in the courts.  
14      So -- and what I told them was a -- a more general  
15      version of what I just told you I was concerned  
16      about.

17              Q       Did you take any steps to verify what  
18      Caryn had told you?

19              A       Well, as I said, I did talk to some  
20      officials that were familiar with that particular  
21      district. I believe I called some of the  
22      individuals who would have, for example, duties  
23      related to processing her complaint when it was  
24      eventually filed. I think we talked to -- my --  
25      my -- one of my senior lawyers and I talked to

1 the -- the person in that area who was doing an  
2 initial investigation of the matter.

3 But, no, I -- I see what you're getting  
4 at. Primarily what I was getting information on  
5 was from Caryn, from people who knew that specific  
6 office, and from the other people at the AO who  
7 had a role in this case.

8 So I did talk to the general counsel  
9 about the case. I remember she had been away for  
10 a couple of days. When she came back, we  
11 discussed it, and, you know, she had concerns as  
12 well.

13 And so, you know, it was -- it was a  
14 topic of conversation because of the allegations,  
15 and -- and, you know, the seriousness that sexual  
16 harassment presented for many employers, Congress,  
17 the executive branch agencies, but certainly the  
18 judiciary as well.

19 MS. McMAHON: Sophia, I think, if we  
20 could, can you pull up Tab C?

21 AV TECHNICIAN: Stand by.

22 And, Counsel, would you like this to be  
23 marked as Exhibit 1?

24 MS. McMAHON: I'm sorry, I'm having a  
25 hard time hearing you.



1 AV TECHNICIAN: Would you like this to  
2 be marked as Exhibit 1? I know we discussed it  
3 earlier.

4 MS. McMAHON: Yes, please.

5 AV TECHNICIAN: Okay.

6 MS. McMAHON: This is marked as  
7 Exhibit 1.

8 AV TECHNICIAN: All right. Stand by.

9 (Government Exhibit 1 was marked for  
10 identification and is attached to the transcript.)

11 BY MS. McMAHON:

12 Q Ms. Dunham, this document, would it --  
13 would it -- would it be fair to say that this  
14 document says Nancy Dunham on the top and is dated  
15 July 23rd?

16 A Yes, that's what I see.

17 Q Would it make sense if I told you that  
18 this was Plaintiff's notes from a call you had  
19 with her on July 23rd?

20 A Yes, that looks very familiar.

21 Q Okay. And hopefully this will refresh  
22 your recollection about that conversation, but  
23 this aligns with what you were telling me about  
24 your first conversation with her in July of 2018;  
25 is that right?

1           A       Yes. And I -- I note that she wrote --  
2           and this is what typically I would say to  
3           employees -- that I was not giving them legal  
4           advice because they needed to get legal advice  
5           from someone who could represent them, but I also  
6           told her about confidentiality. I knew that must  
7           have been important to her. And I can't see the  
8           bottom of the page. Oh, there we go. Okay.

9                    This -- this does refresh my  
10          recollection.

11          Q       Let us know if you want to take your  
12          time to read it. I think Sophia can scroll  
13          through it.

14          A       Okay. And I -- I --

15                   THE WITNESS: Yeah, let's scroll a  
16          little further.

17                   AV TECHNICIAN: (Technician complies.)

18                   THE WITNESS: Okay. So...

19                   AV TECHNICIAN: And, Ms. Dunham, if you  
20          need me to zoom in at all, I'm happy to do so.

21                   THE WITNESS: Okay. I think I'm doing  
22          fine.

23                   Okay. I -- I see that -- that she  
24          wrote down that she -- that I said she was  
25          credible, and that is consistent with my

1 recollection.

2 I see that she wrote down that classic  
3 sexual harassment is an imbalance of power, a red  
4 flag, yes.

5 I see that she wrote down there was no  
6 physical assault, which I asked her about.

7 Okay. And can you keep scrolling?

8 AV TECHNICIAN: (Technician complies.)

9 THE WITNESS: Okay. And -- okay. Keep  
10 going.

11 AV TECHNICIAN: (Technician complies.)

12 THE WITNESS: I see that she talked  
13 about what her career goals were. I remember  
14 that.

15 Okay. Please keep going.

16 AV TECHNICIAN: (Technician complies.)

17 THE WITNESS: She wrote down, "She  
18 believes me." I -- and I did believe her.

19 Okay. Keep going.

20 AV TECHNICIAN: (Technician complies.)

21 THE WITNESS: She did talk about fraud,  
22 waste, and abuse, and I'm -- I am very  
23 knowledgeable about that topic, having dealt with  
24 it at other executive agencies, and I don't recall  
25 the details, but I -- I -- that's why I said there

1 may have been a number of problems in that office,  
2 but I remember her telling me some of those and  
3 that it fell under waste, fraud, and abuse.

4 Okay. Is that the end of it?

5 BY MS. McMAHON:

6 Q Yes, I think so.

7 A Okay.

8 MS. McMAHON: Sophia, could you scroll  
9 back to the first page?

10 AV TECHNICIAN: (Technician complies.)

11 MS. McMAHON: Yes, exactly.

12 BY MS. McMAHON:

13 Q So, Ms. Dunham, I want to point you to  
14 the bottom third of the page where Caryn writes,  
15 "She is already uncomfortable with Asheville  
16 piece."

17 Do you remember what that -- what she  
18 was referring to there?

19 A Well, I think I was referring to what  
20 she was telling me about her office.

21 Q Did she mention during this phone call  
22 an interest in transferring to Asheville?

23 A I, at some point, talked to her about  
24 what she thought would resolve the situation,  
25 which I typically would do, and I believe that her

1 impression was that if she moved to another office  
2 that she would not have the physical contact and  
3 the proximity with Mr. Davis and that she thought  
4 that could resolve things.

5 Q And --

6 A I'm always looking for how might the  
7 situation be better for everyone, which is the way  
8 you typically settle a case that -- where there  
9 are workplace disputes or problems, and so I  
10 believe she talked to me about Asheville would be  
11 a better fit and getting her away from him.

12 Q Do you remember why Caryn would have  
13 written that you are already uncomfortable with  
14 the Asheville piece?

15 A Probably because of the fact that I  
16 told her candidly what my impressions were, that  
17 there were aspects of her situation that were  
18 classic sexual harassment and that, you know, I --  
19 I was concerned for her.

20 Occasionally, you know, people are  
21 actually in physical danger, and there were some  
22 very subtle signs of that in terms of late-night  
23 hanging around her when no one else was around.  
24 And so, yes, I was uncomfortable, and I felt I  
25 needed to do something as soon as possible.

1           Q       Okay. I don't know, Ms. Dunham, if you  
2       want to take a quick break. Just let me know. I  
3       know we've been going for about an hour now.

4           A       Yeah, I think that would be good. A  
5       five-minute break would be wonderful.

6           Q       Okay. We'll plan to come back at  
7       3:15 --

8           A       Okay, thank you.

9           Q       -- our time --

10          A       Yes.

11          Q       -- or 9:15 your time.

12          A       Yes.

13                   (A recess was taken.)

14               THE WITNESS: So you asked me a  
15       question earlier about whether or not I had ever  
16       been deposed as a witness as opposed to as  
17       counselor for someone else, and I -- I remembered  
18       a situation where I was deposed.

19                   So I -- it was when I was at EPA, and I  
20       was an advisor to the Homeland Security office. I  
21       was a Homeland Security national security lawyer,  
22       and I was a witness to a false allegation of  
23       physical and sexual assault by an employee, and I  
24       was asked to testify in that matter.

25                   And so I basically testified against

1 the person who was falsely claiming that one of my  
2 clients had physically assaulted her. I was in --  
3 I was actually in the office when the incident  
4 happened, and so I -- I was deposed probably for  
5 about half a day on that matter, and that was  
6 not -- not in my role as a lawyer, but that was in  
7 my role as a witness.

8 MS. McMAHON: Understood. That sounds  
9 like an interesting case.

10 Sophia, could you pull up Exhibit 1  
11 again?

12 AV TECHNICIAN: (Technician complies.)

13 MS. McMAHON: Could you scroll down to  
14 the second page?

15 AV TECHNICIAN: (Technician complies.)

16 BY MS. McMAHON:

17 Q Ms. Dunham, on page 2, if you'll look  
18 at the third bullet down, it says, "she thinks  
19 that odds stacked against me with them 2 in  
20 charge."

21 What did you tell Caryn about the odds  
22 being stacked against her?

23 A I probably -- and I don't want to  
24 speculate, but I'm thinking what I said is that,  
25 you know, when you have a power imbalance, you're

1 always taking a risk in complaining about it, and  
2 that is what I think that language refers to.

3 Q You're saying you just meant there was  
4 a power imbalance, not that there was anything  
5 about the system that would have meant that the  
6 odds were stacked against her?

7 A Yes. I think -- I think I meant -- or  
8 I think what that refers to is I probably said  
9 that, you know, when you have a power imbalance,  
10 you have, you know, two managers lining up against  
11 you as an employee, that I wanted her to be aware  
12 that -- that this was not an easy case.

13 But -- I don't recall much more than  
14 that, actually, but this gives me a general  
15 recollection of what we talked about.

16 Q Why do you think that the -- when  
17 there's a power imbalance, it's not easy for the  
18 employee?

19 A Well, there's a lot someone can do, you  
20 know, when they are in a position of power to  
21 either make life difficult for an employee or fail  
22 to take action and then have no consequences come  
23 from it.

24 Q If you'll look farther down on that  
25 page --



1 MS. McMAHON: Sophia, if you wouldn't  
2 mind scrolling a tiny bit down.

3 AV TECHNICIAN: (Technician complies.)

4 MS. McMAHON: That's perfect.

5 BY MS. McMAHON:

6 Q -- there's another bullet that's third  
7 from the bottom that says, "no adverse action."

8 Do you remember what that was referring  
9 to?

10 A I think I probably -- that to me says  
11 they have not taken any performance-based or  
12 adverse action related to conduct, and then she  
13 said -- she writes, "may have diminished job  
14 responsibilities."

15 I think that would be that there was no  
16 obvious adverse action taken but that -- that job  
17 responsibilities being diminished are one aspect  
18 of the sexual harassment or other discrimination  
19 complaint that can be actionable.

20 Q And do you remember whether you were  
21 talking about that in the general sense or whether  
22 she gave you any specifics about her situation?

23 A I cannot remember more than what I've  
24 just said.

25 Q No worries.

1 MS. McMAHON: Sophia, if you could  
2 scroll down -- and I know we've already been  
3 through this, but --

4 AV TECHNICIAN: (Technician complies.)  
5 BY MS. McMAHON:

6 Q -- to this page, page 3, and I think  
7 this goes on to page 4 as well. It looks like  
8 it -- oh, maybe even, yeah, 5 too.

9 It looks like, Ms. Dunham, you were  
10 telling Caryn about her various options that she  
11 had in terms of what to do with her allegations.

12 Do you remember advising her as to a  
13 specific course that she should take?

14 A No. That would not be something I  
15 would do, and -- and I did talk about options with  
16 her. And I see she wrote, What feels better?  
17 Informally? Or enter into settlement agreement.

18 I know that one of the first things I  
19 thought that the AO should do is look at whether  
20 the situation could be resolved informally. I've  
21 been in many, many situations where a very bad  
22 employment situation could be resolved with  
23 everyone being better off due -- due to a  
24 settlement, and so that -- that was always -- even  
25 when I was a defense counsel, that was always

1 something I looked at, can we settle this  
2 favorably for both sides.

3 Q When you say settle informally, do you  
4 mean without going through the official process?

5 A I mean -- yes. I mean talking with  
6 those who have decision-making authority and  
7 seeing whether what the Plaintiff would find  
8 acceptable in a settlement would be something that  
9 the managers would also be in agreement with.

10 Q Would you still think that's the case,  
11 even if there was not an official or unofficial --  
12 any type of investigation?

13 A Oh, absolutely, because, you know,  
14 if -- if the managers had discussed the  
15 situation -- the workplace situation informally  
16 with AO managers, general counsel, my office, and  
17 said we want to resolve this, we are -- you know,  
18 one way to have handled this was if they had said  
19 we didn't know that she was upset about this, and  
20 we would like to resolve it favorably for  
21 everyone, and we know that having an employee who  
22 feels threatened, at risk, is unhappy, especially  
23 someone who does really good work, one way that  
24 this could have gone would have been to settle  
25 early and to avoid everything that has happened

1 since.

2 And that's what I always look at,  
3 especially in cases that I'm troubled by, and I  
4 can see that that didn't happen.

5 MS. McMAHON: Sophia, could you go to  
6 page -- page 3 and scroll down to the bottom?

7 AV TECHNICIAN: (Technician complies.)

8 BY MS. McMAHON:

9 Q So it says right above the Bates  
10 number, Bates number 18, "not a good idea - least  
11 formal - work with her office - very informally  
12 involved behind the scenes."

13 A Yes.

14 Q Did you think that was not a good idea  
15 at the time?

16 A I think what that's referring to -- I  
17 think her notation, "not a good idea - least  
18 formal" -- so I think maybe the -- the formal  
19 complaint process may not have been a good idea.

20 I probably said, and I believe this  
21 now, that the least formal method would have been  
22 the best one, because you have so many more  
23 options, and people that start into a complaint  
24 process and begin to litigate get a little --  
25 sometimes they get a little frozen in their

1 positions, either the managers or the employees.

2 So I thought this was something that --  
3 especially with the senior people who were  
4 involved at the AO -- may have been able to be  
5 resolved early on informally.

6 Q But do you know why she had written  
7 down, "not a good idea - least formal"?

8 A Well, I think it was probably that --  
9 that the negatives about formal proceeding and  
10 that the least-formal method, informal settlement  
11 may have been a better idea.

12 But, again, I didn't make the decision.  
13 I was giving her options and giving her my  
14 experiences at the AO and at other institutions.

15 Q And you thought -- what you're telling  
16 me is you thought moving through the official  
17 channels that may have involved more official  
18 processes, in your experience, had been a worse  
19 idea?

20 A Yes.

21 Q Understood.

22 MS. McMAHON: You can take down  
23 Exhibit 1, please.

24 AV TECHNICIAN: (Technician complies.)

25 MS. McMAHON: Great.

1 BY MS. McMAHON:

2 Q So that was your initial phone call  
3 with Caryn on July 23rd of 2018, and I know you  
4 mentioned you started talking to her frequently.

5 Do you know when the next phone call  
6 was that you had with Caryn?

7 A I do not know.

8 MS. McMAHON: Sophia, could you pull up  
9 Tab D, please?

10 (Government Exhibit 2 was marked for  
11 identification and is attached to the transcript.)

12 BY MS. McMAHON:

13 Q I'll mark this as Government Exhibit 2.

14 This is an e-mail chain between Caryn  
15 and Ms. Dunham, and it is very long, so there's a  
16 couple things that I want to discuss in here, but  
17 we can -- I'd like to start actually at the very  
18 bottom, which is the earliest e-mail between you.

19 And, Ms. Dunham, I don't know if you  
20 want to take a moment to read it. You're welcome  
21 to do that.

22 A Yeah, I -- I will read, I guess,  
23 backwards from Thursday, the 26th.

24 Yes, I remember this.

25 THE WITNESS: Okay. And then go back

1 to the next e-mail.

2 AV TECHNICIAN: (Technician complies.)

3 THE WITNESS: Okay. Let's see. Okay.

4 Okay. I recognize this.

5 BY MS. McMAHON:

6 Q Great.

7 A Right, but I definitely -- I definitely  
8 remember my concerns about her working in an  
9 isolated part of the building.

10 Okay. And --

11 MR. GERSEN: I apologize for  
12 interrupting.

13 Would it be possible to see the exhibit  
14 in the chat or somewhere else so we could look at  
15 it outside of this shared window?

16 AV TECHNICIAN: Yes, I'm happy to share  
17 it. Please stand by.

18 MR. GERSEN: Thank you so much.

19 AV TECHNICIAN: I've uploaded it to the  
20 chat.

21 And if you need Exhibit 1, just please  
22 let me know.

23 THE WITNESS: Okay. Could you continue  
24 to scroll forward in time?

25 AV TECHNICIAN: (Technician complies.)

1 THE WITNESS: Oh, there we go. Okay.

2 Okay.

3 BY MS. McMAHON:

4 Q Okay. So I'd just like to start with  
5 the bottom couple e-mails starting on page 3.

6 So page 3 and 4 -- 3 through 5 involve  
7 e-mails from Caryn to you, Nancy, from Thursday,  
8 July 26?

9 A Yes.

10 Q And she is e-mailing you, it appears,  
11 about Tony Martinez.

12 Do you remember who Tony Martinez is?

13 A Now I do. I -- I recognize Tony. I  
14 couldn't have told you what his last name was.  
15 Now I recall. So I can see that she's reporting  
16 what Tony said to her in a phone call.

17 Q Uh-huh. And -- so you write on  
18 July 26, 2018 -- that's in the middle of page 3 --

19 MS. McMAHON: If you could scroll up a  
20 little bit, Sophia, that would be great.

21 AV TECHNICIAN: (Technician complies.)

22 MS. McMAHON: Perfect.

23 BY MS. McMAHON:

24 Q You said, "Let's proceed as discussed  
25 yesterday."



1                   So did you have a phone call with  
2                   Plaintiff on July 25th, 2018?

3                   A        I can't recall that.

4                   Q        And just to summarize so that we  
5                   don't -- we don't need to read all of this.

6                               Essentially, what Caryn has e-mailed  
7                   you, it seems as that Tony had put her temporarily  
8                   back on a team with J.P., and he called her  
9                   afterward to apologize and say that he had made a  
10                  mistake in doing so and took her back off that  
11                  team a couple days later.

12                               So then if you scroll up to the bottom  
13                  of page 2, that's an e-mail from Friday, July 27th  
14                  from Caryn to you, and she writes, "Hi Nancy, I  
15                  just spoke with the appellate chief, (josh)." And  
16                  she and Josh are having a discussion about whether  
17                  she should apply for the position of appellate  
18                  Assistant Federal Defender.

19                               Do you remember that?

20                  A        Vaguely. I -- I can see the -- the  
21                  language, and I -- I have a -- a very weak  
22                  recollection of that part of it.

23                  Q        Do you recall her talking about wanting  
24                  to work as an appellate lawyer?

25                  A        Yes, I do recall that.

1 Q What did she say about that?

2 A Well, that was part of her career goal,  
3 and that was very much related to her background,  
4 so I -- I do recall that as being something that  
5 she was interested in.

6 Q And do you remember her raising that as  
7 a possible resolution to her sexual harassment  
8 claims?

9 A Well, I think that was a solution to  
10 her sit- -- her employment situation, so that if  
11 she had taken that job, that she would no longer  
12 be reporting to Mr. Davis and Mr. Martinez.

13 And so, yes, I think that that was  
14 something that she thought could solve the  
15 situation, and my recollection is that would have  
16 been great.

17 Q So in the earlier e-mails at the bottom  
18 of this document that we're looking at, the  
19 July 26th e-mails, she says, I think, on page --  
20 on page 4, she says, "I have attached a PDF of  
21 Tony's e-mail to the office and the appellate AFD  
22 job posting."

23 Do you see that?

24 A I do not.

25 MS. McMAHON: I think if we could

1 scroll down a little -- sorry, Sophia -- just to  
2 page 4.

3 AV TECHNICIAN: (Technician complies.)

4 BY MS. McMAHON:

5 Q And that's above her signature block,  
6 the sentence, "I have attached..."

7 A Okay. I see that.

8 Q Do you recall her talking about this  
9 specific appellate AFD posting?

10 A I vaguely recall that, yes.

11 Q And do you recall reading the actual  
12 appellate AFD posting that Caryn sent you?

13 A I actually -- I can't -- I'm sure I  
14 did, but I can't remember for sure.

15 Q Understood.

16 So do you remember whether you  
17 encouraged -- or if you encouraged Caryn to apply  
18 to the appellate AFD job?

19 A No. That would not have been the sort  
20 of thing I would have done. I would have read  
21 what her desire for a solution to her situation  
22 was, and if I thought that that would have  
23 resolved the employment dispute and the current  
24 situation that she was uncomfortable with, I -- I  
25 likely would have encouraged her.

1                   But -- but I don't remember the details  
2                   of that, and I -- and I would not typically try to  
3                   push somebody into doing something unless they  
4                   wanted to do it.

5                   MS. McMAHON: Sophia, if you'll scroll  
6                   up again to the top of page 3.

7                   AV TECHNICIAN: (Technician complies.)

8                   BY MS. McMAHON:

9                   Q           That's back to this e-mail where Caryn  
10                  summarizes her conversation with the appellate  
11                  chief, Josh Carpenter.

12                  A           Uh-huh.

13                  Q           She writes to you that, He said I  
14                  basically "already" have the position they are  
15                  hiring for and that I don't "need" to apply. He  
16                  said that because I am "lower" on the experience  
17                  scale being an R&W" -- a research and writing  
18                  attorney -- is financially better than being an  
19                  AFD and that only after 10-15 years' experience  
20                  does it make sense for me to move to an AFD.

21                  Do you remember what your reaction was  
22                  to reading this?

23                  A           Well, I can see that she says,  
24                  "Obviously, this hasn't gone as I hoped." So I  
25                  think she was disappointed in Josh's response, but

1 I honestly -- this -- this part of it, I have  
2 very, very little recollection of.

3 Q Did you -- do you remember having any  
4 reason to doubt Josh Carpenter's intentions or  
5 that he wasn't telling the truth when he told her  
6 she would -- she was in a more financially  
7 advantageous position as a research and writing  
8 attorney?

9 A I did not have an opinion on that.

10 MS. McMAHON: So if you'll scroll up to  
11 page 1.

12 AV TECHNICIAN: (Technician complies.)

13 BY MS. McMAHON:

14 Q On August 3rd, 2018, you write to  
15 Caryn, "Please give me a call today if you can."

16 A Uh-huh.

17 Q So it's fair to say you had another  
18 phone call on August 3rd?

19 A I assume that she called me when I told  
20 her I -- I had availability, but I cannot remember  
21 that for sure.

22 Q Can we -- I'm going to show you a  
23 document that might refresh your recollection  
24 again.

25 A Okay, uh-huh.

1 MS. McMAHON: Sophia, if you could pull  
2 up Tab F.

3 AV TECHNICIAN: (Technician complies.)

4 MS. McMAHON: And also put it in the  
5 chat, please.

6 AV TECHNICIAN: (Technician complies.)

7 (Government Exhibit 3 was marked for  
8 identification and is attached to the transcript.)

9 MS. McMAHON: Great.

10 BY MS. McMAHON:

11 Q Is it fair to say that these notes --  
12 it says Nancy at the top and dated 8/3 -- are  
13 Caryn's notes from that phone call?

14 A I think that must be true. And I'm  
15 looking at the content of what she has written,  
16 and I also recollect that I did talk to the deputy  
17 director, and -- yep, and I can see a number of  
18 other substantive matters. Oh, Cait Clarke is the  
19 person I was trying to think of before.

20 Cait Clarke was the senior person that  
21 had responsibilities for and with the federal  
22 protector defender's office, and I think she said  
23 she'd give Tony a call, and I -- I recall that.

24 MS. McMAHON: I'd like to mark this,  
25 for the record, as Dunham Exhibit 3.

1 BY MS. McMAHON:

2 Q So up at the top, Ms. Dunham, it says  
3 you talked to deputy director, correct?

4 A Right.

5 Q Would that -- is the deputy director  
6 Lee Ann Bennett?

7 A It is.

8 Q Okay. And do you recall what you  
9 talked to Ms. Bennett about?

10 A Well, I think I told her the general  
11 situation here and what my impressions were.

12 I also recall that I told her about a  
13 situation where -- when Tony was made aware of  
14 these allegations of harassment and Caryn's  
15 discomfort with, you know, some of the late-night  
16 meetings and her -- her feelings that she was not  
17 secure, I believe that Mr. Martinez sat Mr. Davis  
18 down in a room with Caryn and said something like,  
19 well, let's try to work this out, or, you know,  
20 let's have you two work this out. And I believe  
21 that that was one of the things that I told  
22 Ms. Bennett that was concerning.

23 Q Did Caryn tell you -- did Caryn ask you  
24 to talk to Ms. Bennett or Cait Clarke about her  
25 situation?

1           A       No, that -- I doubt that came from her.  
2       That was my responsibility, having heard  
3       allegations that concerned me, to address the  
4       situation, and Cait Clarke and Lee Ann Bennett  
5       would have been two individuals at a senior level  
6       who might have been able to do something about it.

7                       And so that -- and it was also my job  
8       to inform senior managers of allegations so that  
9       they could -- they would be on notice that they  
10      needed to take action or to get more information  
11      if they felt that was necessary.

12          Q       Why did you talk to Lee Ann Bennett  
13      about it?

14          A       She was my immediate supervisor. She  
15      was second-in-command at the AO. She had  
16      responsibilities that related to that office and  
17      actually all the offices in the courts, and she  
18      was someone I had enormous amount of respect and  
19      trust in, and when I told her about this case, her  
20      responses were incredibly intuitive.

21                     She was the one that mentioned, you  
22      know, when there is a huge power imbalance and  
23      somebody's trying to control the -- the employee  
24      at issue, that -- I mean, she was not a lawyer,  
25      but she recognized that was part of a classic



1 sexual harassment claim.

2 Q And why did you talk to Cait Clarke?

3 A Well, Cait Clarke also had -- had  
4 responsibilities related to that office, and she  
5 was also somebody I had respect for, and I knew --  
6 these are both people that I -- I had confidence  
7 would do the right thing.

8 Q Can you be more specific about what  
9 Cait Clarke's role was with respect to the office?

10 A Cait Clarke -- I can't remember exactly  
11 what her position was, but she was a senior  
12 official that had responsibilities for -- for the  
13 public defender's offices, and I believe that  
14 Caryn knew her from her time at the AO as a  
15 U.S. Supreme Court Fellow.

16 And Cait Clarke I trusted, I mean, and  
17 Cait Clarke had a history with that office, so she  
18 knew the parties involved, she knew, you know,  
19 things that had happened in the past, and she gave  
20 me some good information, as I recall.

21 Q Do you recall what information she gave  
22 you?

23 A I -- all I recall is that she told me  
24 that there had been problems with that office in  
25 the past, and I -- I do not recall the details.

1           Q       Did it occur to you at this point to  
2       approach Tony, who was the federal defender at the  
3       time?

4           A       That -- that was not my role, and I did  
5       not think that was needed because I knew that -- I  
6       believe that Tony and J.P. were having  
7       conversations with the Office of General Counsel.  
8       So I was very careful not to interfere with  
9       that -- the role of the Office of General Counsel.

10                  Now, if -- if the general counsel's  
11       office or the lawyers would have said we would  
12       like you to talk with us to J.P. or Tony, I -- I  
13       would have considered doing that, but at that  
14       point, I -- I thought that the conversations with  
15       the managers about what to do in order to protect  
16       the judiciary and the AO were already taking  
17       place.

18           Q       What made you think that J.P. and Tony  
19       were having conversations with the general  
20       counsel's office?

21           A       I believe that I was probably in  
22       meetings. I don't recall this precisely, but I  
23       believe that typically what would have happened is  
24       if the general counsel's office were concerned  
25       about an employment situation, they would contact

1 the managers involved.

2 Q And just so I understand, why would  
3 your role have been to contact someone like Cait  
4 Clarke who oversaw the federal defenders and not  
5 the federal defender himself, who was also a  
6 manager?

7 A Cait Clarke, I felt, could give me some  
8 insight into the workings of that office, could  
9 possibly have reached out to the people at issue,  
10 and devised an informal settlement, and while I  
11 could have, I -- it was certainly within my job  
12 responsibilities to talk to Mr. Davis or  
13 Mr. Martinez, I knew that they were talking to the  
14 Office of General Counsel, so I thought it better  
15 that I not get involved with that part of the  
16 situation.

17 Q Were you told directly that they were  
18 talking to the Office of General Counsel?

19 A I think I -- I think I interpreted what  
20 the lawyers in OGC told me or that  
21 Deputy Director Bennett told me that those  
22 conversations were going on, but I -- I -- I did  
23 not have any firsthand knowledge.

24 I was never in a meeting or phone  
25 conference with the Office of General Counsel and

1 those two managers.

2 Q So if we could look again at Exhibit  
3 Number 3, and the -- the second -- so the first  
4 bullet down says, "she talked to deputy director."

5 A Uh-huh.

6 Q And then the second bullet says,  
7 "request immediate transfer to Asheville office;  
8 make sure he considers it."

9 A Uh-huh. Yes.

10 Q And then the third bullet says, she has  
11 not talked to any other -- I think it says  
12 manager, I'm not sure -- in FPD, but will tell  
13 Cait Clarke; Clarke will make call to Tony -  
14 should grant request.

15 Is that right?

16 A Yes.

17 Q So did you think that Cait Clarke would  
18 order Tony to grant her request -- to grant  
19 Caryn's request to transfer to Asheville?

20 A No. Cait Clarke I don't believe had  
21 any authority to order the public defender to do  
22 anything, but the -- I -- I took that conversation  
23 to -- you know, to make a suggestion or to offer  
24 assistance in resolving the situation.

25 Q Did you and Caryn either in this call

1 or before discuss her move from be- -- from being  
2 a research and writing attorney to being an  
3 Assistant federal defender?

4 A It sounds familiar, but I cannot -- I  
5 cannot remember exactly a conversation like that.

6 Q Do you remember in this conversation on  
7 August 3rd discussing -- appointing some sort of  
8 fact-finder to investigate her claims?

9 A Well, I would not have had the  
10 authority to appoint a fact-finder. I think  
11 the -- the judiciary process would have started  
12 with counseling, and the counselor could have done  
13 some informal fact-finding. I do remember that  
14 happening at some point.

15 MS. McMAHON: Sophia, if you'll scroll  
16 down to the bottom of page 1.

17 AV TECHNICIAN: (Technician complies.)

18 BY MS. McMAHON:

19 Q It says in the last bullet, she told  
20 Lee Ann very credible - we can't do everything  
21 without fact-finder.

22 A True.

23 Q What did you mean by that?

24 A Well, I'm assuming what I meant, and it  
25 would have made sense in this situation, is we

1 needed more facts.

2 As you pointed out early on, we were  
3 hearing one side and then some general information  
4 from AO employees about that particular Charlotte  
5 office. We -- we needed more facts. And just  
6 because I found someone credible, in order to do  
7 the right thing, more facts needed to be had.

8 Q What do you mean by "in order to do the  
9 right thing"?

10 A Well, in order to comply with the civil  
11 rights laws, in order to make a good decision that  
12 would avoid liability for the judiciary, but also  
13 do the right thing in terms of our legal  
14 obligations to the employee.

15 Q To which employee?

16 A To Caryn. And -- and, in fairness, to  
17 the managers as well. I mean, fact-finding can  
18 turn a case because you find out more information,  
19 and it rounds out the entire picture.

20 Q Would you typically recommend to  
21 managers appointing some sort of fact-finder for  
22 the reason that you just mentioned?

23 A I don't think I recommended that to the  
24 managers. I think that -- I think the process --  
25 the -- the judicial complaint process in -- in

1       that district would have started with EEO  
2       counseling, and I think that counselor would have  
3       done some interviews, and I remember actually  
4       talking to that individual who had started  
5       interviews and was doing fact-finding, not -- she  
6       wasn't finding facts. She was taking information  
7       from all the parties involved.

8           Q       And at that point, like you said, at  
9       this phone call on August 8th, all you knew about  
10      Caryn's situation was what Caryn had told you?

11          A       What Caryn had told me, what Cait  
12      Clarke, Laura Minor, and others, including the  
13      Office of General Counsel and the deputy director,  
14      told me about that particular office and their  
15      knowledge of the parties.

16          Q       When you say "that particular office,"  
17      that's -- just to clarify, that means, in general,  
18      background about the office, not any specific  
19      facts about what Caryn was alleging --

20          A       Yes.

21          Q       -- is that right?

22          A       Yes.

23          Q       And you hadn't seen any  
24      documentation -- Caryn hadn't sent you any  
25      documentation at that point, you know, to

1 corroborate her claims or to -- to give you more  
2 specific context about her claims?

3 A I don't recall.

4 MS. McMAHON: So if we could scroll  
5 down to page 2 of Exhibit 3.

6 AV TECHNICIAN: (Technician complies.)  
7 BY MS. McMAHON:

8 Q The second bullet down on page 2 says,  
9 "telework - a little bit beyond scope of remedy."

10 Do you recall why you would have said  
11 that telework was beyond the scope of the remedy?

12 A I do not recall.

13 I mean, I think what I might have meant  
14 is what you do as a manager to resolve a claim of  
15 harassment or discrimination if you want to settle  
16 it according to the law is to put the person in  
17 the position they would have been absent the  
18 harassment or discrimination.

19 So I'm not sure that if this had been  
20 adjudicated and if there had been a finding of  
21 harassment or discrimination that what a judge or  
22 someone else would have ordered would have been  
23 telework. It would have been, you know,  
24 reinstatement to the position that the employee  
25 would have been in absent discrimination, which



1 would have been a job.

2 Now, there are -- there are cases where  
3 telework is at issue, someone wants to telework  
4 because of a disability, and so the -- the remedy  
5 would -- would include telework. But I -- I'm --  
6 I'm offering a reasoned explanation about those  
7 notes.

8 Q I understand.

9 It also says, in the fourth bullet  
10 down, "send offer letter to her."

11 Do you remember discussing Caryn's  
12 offer letter with her?

13 A I -- I really do not.

14 Q No problem.

15 MS. McMAHON: So if we could go back to  
16 Exhibit 2.

17 AV TECHNICIAN: (Technician complies.)

18 BY MS. McMAHON:

19 Q And just the top of the page, is it  
20 fair to say this is an e-mail from Caryn to you  
21 from August 6th, 2018?

22 A Yes.

23 Q So she writes, "Nancy, I had a good  
24 phone call with Laura yesterday," and she writes  
25 that she's attaching copies of her offer letter

1 and a related e-mail and some communications from  
2 the first assistant, "including an email saying he  
3 would raise my pay if I stayed in charlotte and a  
4 text message he sent me when he waited for me in  
5 the lobby one evening when I had already said no  
6 to a ride."

7 Do you recall receiving this e-mail?

8 A I -- I do recall the substance of that  
9 e-mail.

10 Q Uh-huh. Do you recall seeing the  
11 attachments that she mentions?

12 A I'm sure I did, but I can't remember  
13 them enough to testify again about them.

14 But, again, what raised red flags for  
15 me was his saying that he'd raise her pay if she  
16 stayed in Charlotte and that -- I mean, again, the  
17 control issue, and then the text message she got  
18 from him when he waited in the lobby and he had  
19 been pestering her to give her a ride home.

20 And so I do specifically remember those  
21 situations, because, again, they were red flags  
22 for me of concern.

23 Q This was the first time that -- on  
24 August 6th, 2018, that you were actually viewing  
25 copies of that e-mail and that text message; is

1       that right?

2               A       I believe that's correct.

3               MS. McMAHON:   Sophia, can you pull up  
4       Tab H, please?

5               (Government Exhibit 4 was marked for  
6       identification and is attached to the transcript.)

7               MS. McMAHON:   I'll mark this as  
8       Government Exhibit 4, and this is the e-mail that  
9       was attached to the August 6th e-mail to  
10      Ms. Dunham from Caryn, and this attachment is the  
11      e-mail that she was referencing from J.P. Davis to  
12      Caryn that's from May 18th, 2018 that discusses  
13      pay-for-stay.

14      BY MS. McMAHON:

15              Q       Ms. Dunham, I don't know if you want a  
16      minute to read this.

17              A       No, I've already read it.

18              Q       So how did you interpret this e-mail  
19      when you saw it?

20              A       Well, I remember it clearly, and I  
21      expressly remember the last line which is, "I have  
22      a plan...just remember I deal in pay-for-stay,"  
23      and that to me, again, was indicative of  
24      Mr. Davis' manipulating Caryn's conduct and urging  
25      her to stay in the office that he worked in.

1           Q       Did Caryn tell you that she had told  
2 J.P. earlier that she would quit -- she would have  
3 to quit if she didn't make more money?

4           A       I don't recall that at all.

5           Q       Can you explain specifically what you  
6 believe is sexual in nature about pay-for-stay?

7           A       Oh, I don't think pay-for-stay is  
8 sexual. I think it is indicative of manipulating  
9 the employee's conduct and staying in -- in close  
10 proximity to her.

11                   So, no, nothing sexual about that.  
12 There were -- the sexual aspects were scattered  
13 through other aspects of the behavior, but this  
14 is -- this is the control issue.

15          Q       So without knowing the -- without the  
16 other examples that you -- that Caryn had told you  
17 about her allegations against J.P., you don't  
18 think that this e-mail alone would constitute  
19 sexual harassment?

20          A       I'm not going to speculate on that.  
21 Again, it is one e-mail out in a -- in a broad  
22 context of behavior, and what I see here and what  
23 I saw then was -- was the issue of control and  
24 trying to control her, which is very common in  
25 sexual harassment cases or in cases of harassment

1 in general.

2 Q Is it possible that as her mentor, J.P.  
3 interpreted this e-mail as wanting her to stay and  
4 wanting to help raise her pay?

5 A I can't speculate about that.

6 Q Do you think that this e-mail is only  
7 subject to one interpretation?

8 A No, I'm positive that everything is  
9 subject to multiple interpretations.

10 Q If you had known that Caryn told J.P.  
11 that she'd have to quit if she wasn't transferred  
12 to Asheville or got a raise, would that have  
13 changed your view on the context of this e-mail  
14 and -- and whether it really was an effort to  
15 control her?

16 A I can't speculate about that.  
17 That's -- that isn't what happened, so...

18 Q And how do you know that's not what  
19 happened?

20 A I mean, I had no facts to -- to rely on  
21 to believe that.

22 Q That's not the account that Caryn told  
23 you?

24 A It may have been, but I just -- I  
25 didn't have anything that would cause me to

1 believe that this was an appropriate management  
2 request. I just -- the -- what concerned me was  
3 the control issue and the desire to stay in  
4 proximity with her.

5 MS. McMAHON: Sophia, if you could pull  
6 up Tab I, please.

7 (Government Exhibit 5 was marked for  
8 identification and is attached to the transcript.)

9 MS. McMAHON: This is Exhibit 5, and  
10 this is another attachment to the August 6th, 2018  
11 e-mail from Caryn to Ms. Dunham.

12 BY MS. McMAHON:

13 Q Ms. Dunham, do you remember reading  
14 this e-mail -- or, sorry, these texts?

15 A These texts, yes, I do.

16 Q Do you remember what this was in  
17 reference to?

18 A This is in reference to J.P. pushing  
19 Caryn to take a ride home with him when she had  
20 already told him that she preferred not to.

21 Q Did you interpret this offer for a ride  
22 home as sexual harassment?

23 A It concerned me because of the nature  
24 of her being very isolated in the office. This  
25 was late at night. She had already told him, no,

1 she did not want a ride home, and he continued to  
2 pursue it.

3 And -- and, again, what that told me  
4 was not that that is just overall a wrong thing to  
5 do, but when someone says no, that should be  
6 respected.

7 Q And the time stamp on this text is  
8 6:44 p.m.; is that right?

9 A Right, right. Yes, that's what I see.

10 Q Were you aware that J.P. had given  
11 Plaintiff -- sorry, given Caryn ride homes in the  
12 past?

13 A I don't think I knew that.

14 Q Caryn didn't tell you that?

15 A I don't think so.

16 Q Would that have changed how you viewed  
17 J.P.'s offer to give her a ride home in the rain?

18 A No, because at some point, she became  
19 uncomfortable with his conduct in the workplace,  
20 and being alone with him in his car was a concern  
21 to her, and I understand that, and once she said  
22 no, I was concerned about his continuing to pursue  
23 it.

24 Q Did Caryn show you any of the prior  
25 communications that she had had with J.P.?

1           A       I cannot recall, but I know that she  
2       sent -- she kept very good records and sent me  
3       examples of things that we were talking about so  
4       that I could see for myself what was happening.

5                    I mean, she told me about this -- this  
6       late-night push for a ride home when she had said  
7       no, and then later she showed -- she actually sent  
8       me a copy of the texts.

9           Q       And just so we're clear, you -- you  
10      wouldn't consider this text to be the actual  
11      sexual harassment, more indicative of control?

12          A       Well, here's what I -- here's what I  
13      think now, and I would suspect I thought it at the  
14      time: If you have been aware that someone has a  
15      romantic or sexual interest in you and they're  
16      pushing you to be alone in a car when you have  
17      said no and you're not comfortable with it, it  
18      would have struck me as a possible risk of  
19      something happening like a sexual assault. And so  
20      I respected her discomfort with going in a car  
21      alone with him whether or not it was raining.

22          Q       And the expression of romantic interest  
23      that we discussed earlier was -- would you explain  
24      again what that's based on?

25          A       Well, as I said, he publicly made a



1 statement that Caryn was hot and then took other  
2 opportunities to be alone with her, including this  
3 evening, asked her out for drinks, and  
4 consistently tried to take control of her work by  
5 self-appointing himself as her mentor.

6 MS. McMAHON: So could we pull up  
7 Tab J, please?

8 (Government Exhibit 6 was marked for  
9 identification and is attached to the transcript.)

10 BY MS. McMAHON:

11 Q And this is Exhibit 6, so this is  
12 another long e-mail chain. My apologies. If we  
13 could maybe read it from the bottom again, that  
14 might make the most sense, because that's  
15 chronological.

16 So this starts with an e-mail -- this  
17 is an e-mail chain between Caryn and Ms. Dunham,  
18 and it starts, again, right after -- on August 6th  
19 after she had -- Caryn had e-mailed the documents  
20 that we've been discussing.

21 A Yes.

22 Okay. I've finished reading.

23 MS. McMAHON: So, again, Sophia, if you  
24 could scroll all the way to the bottom.

25 AV TECHNICIAN: (Technician complies.)

1 BY MS. McMAHON:

2 Q The second e-mail from the bottom on  
3 August 6th, 2018 that's at 3:38 p.m., you e-mailed  
4 Caryn to say, "I am meeting with Cait Clarke today  
5 to generally make her aware of the situation. No  
6 decisions, just discussing possibilities." I will  
7 report back to you.

8 It's fair to say that you met with Cait  
9 Clarke on August 6th, 2018?

10 A Yes.

11 Q So you said, "No decisions, just  
12 discussing possibilities."

13 A Right.

14 Q What did --

15 A What I meant by that was that, again,  
16 Cait Clarke was not in a position to make a  
17 decision about this case, but she could talk to  
18 the people in that office who were in a position  
19 to either give Caryn another position or otherwise  
20 resolve it.

21 Q And when you said "no decisions, just  
22 discussing possibilities," what did you mean by  
23 saying "no decisions"?

24 A Well, I -- I expect that I meant Cait  
25 and I talked about possibilities for resolving the

1 matter.

2 Q Do you recall what those possibilities  
3 were?

4 A Well, what I recall is that we were  
5 looking for a work placement that was -- did not  
6 put her in close proximity to Mr. Davis and  
7 allowed her to do the work that she wanted to do.

8 Q When you say allowed her to do the work  
9 she wanted to do, what do you mean by that?

10 A Well, for example, it would not have  
11 been reasonable to transfer her to Asheville to a  
12 position as a legal secretary.

13 What was important was that she was  
14 doing comparable work, and so there was no  
15 diminution of responsibilities in a place where  
16 she was not directly supervised by Mr. Davis.

17 Q So you mean comparable work, not --

18 A Yes.

19 Q -- not more, not less? Comparable?

20 A Yes, exactly.

21 Q So if you'll scroll up a bit, you  
22 say -- this is on August 6th, 2018 at 5:11 p.m.  
23 You say, "Hi Caryn, Please call me when you have a  
24 few minutes," and you give your number.

25 Is it fair to say, then, that you had a

1 conversation -- a phone conversation with Caryn on  
2 August 6th?

3 A Yes.

4 Q Okay. And do you recall what you  
5 discussed on that phone call?

6 A I do not without looking at documents  
7 that Caryn may have created based on our  
8 conversation.

9 MS. McMAHON: Sophia, can you pull up  
10 Tab K, please, and put it in the chat too.

11 (Government Exhibit 7 was marked for  
12 identification and is attached to the transcript.)

13 BY MS. McMAHON:

14 Q This is Exhibit 7, and at the top Caryn  
15 writes, "Nancy - she met with Cait." This is  
16 dated 8/6.

17 A Uh-huh.

18 Q It's fair to say these are notes from  
19 the phone call that you had with Caryn on  
20 August 6th?

21 A Yes, it looks like it.

22 Q Okay. I'll give you a moment to read  
23 through it.

24 A Okay. I remember this.

25 This second -- or third paragraph is

1 what I had mentioned about Mr. Martinez sitting an  
2 employee who had complained of sexual harassment  
3 down with the person she said was the perpetrator  
4 and sort of forced them to discuss the situation  
5 in a meeting.

6 THE WITNESS: And you can keep  
7 scrolling down.

8 AV TECHNICIAN: (Technician complies.)

9 THE WITNESS: Okay.

10 Okay. Keep going.

11 AV TECHNICIAN: (Technician complies.)

12 THE WITNESS: Okay. Next page.

13 AV TECHNICIAN: (Technician complies.)

14 THE WITNESS: Okay. I'm having trouble  
15 reading some of the writing.

16 BY MS. McMAHON:

17 Q That's okay. Me too.

18 MS. McMAHON: Sophia, if you could just  
19 scroll back up to the very top on page 1, that  
20 would be great.

21 AV TECHNICIAN: (Technician complies.)

22 BY MS. McMAHON:

23 Q Okay. So it says on that first page,  
24 this is the -- one, two, three, four, five, six --  
25 sixth bullet down, "she thinks she can handle

1 this - she crafted with me a potential solution."

2 Do you see that?

3 A Yes, I do see it.

4 Q What did you -- what do you think Caryn  
5 meant by saying that you can handle it and she and  
6 you -- she and you came up with a potential  
7 solution?

8 A Well, I assume that what I was saying  
9 was if she were to be reassigned to Asheville,  
10 that that would meet her needs, that would resolve  
11 the situation with Mr. Martinez, and I thought  
12 that that could definitely be an informal  
13 resolution to a settlement agreement to this  
14 problem.

15 Q And then if you'll go to page 3, that  
16 second bullet down says, "she's on my side - she  
17 said she'll deal with what she needs after that."

18 A I can see that.

19 Q Did you tell Caryn that you were on her  
20 side?

21 A I don't recall saying that. I don't  
22 recall saying that.

23 Q You mentioned earlier that your role  
24 was as a neutral advisor.

25 Would you think it's appropriate to

1 tell one of the parties that you're on their side?

2 A I -- to answer that, I would have to  
3 know the context.

4 One of the ways that you settle a  
5 difficult employment situation is to look at what  
6 is best for all sides. And so if I were trying to  
7 settle this, I would have been looking to what was  
8 good for the judiciary and the AO, as well as what  
9 was good for the employee.

10 Typically, I would not say to someone  
11 I'm on your side, but that may -- I don't remember  
12 the conversation, so that might have been her  
13 impression of what I was saying.

14 I think at some point, she began to  
15 trust me, and so -- I can't explain the language.  
16 My best -- my best explanation is that, as I said,  
17 I -- to try to settle a case, I would have been  
18 looking to what was good for the employee, what  
19 was good for the managers, what was good for the  
20 judiciary, and what was good for the AO.

21 Q And when Caryn writes, "she said she'll  
22 deal with what she needs after that," what were  
23 you dealing with?

24 A Well, if -- occasionally when I would  
25 get involved with cases that were contentious,

1 the man- -- a manager or managers might complain  
2 to my boss or somehow communicate to me  
3 displeasure, and that happened.

4 I don't recall any of that happening in  
5 this case, but I think what I probably meant was I  
6 was anticipating if there was negative reaction  
7 from the public defender's Office in Charlotte  
8 that I would deal with it.

9 Q Why would there be a negative reaction  
10 in this case?

11 A Well, just based on what I knew of how  
12 Mr. Martinez and Mr. Davis had handled the  
13 allegations thus far. I thought, well, we may get  
14 some negative feedback, and I -- and as I said,  
15 Cait Clarke had told me some history on the  
16 office, and I did not think that these were  
17 managers that were particularly open to being  
18 criticized.

19 Q That wasn't based on any of your own  
20 personal knowledge, right? That was what Caryn  
21 told you or Cait?

22 A That's what other people told me, yes.

23 MS. McMAHON: I know we've been going  
24 for a while, so I'm happy to take a break again  
25 for a couple minutes or whatever makes you most



1 comfortable, Ms. Dunham.

2 THE WITNESS: Okay. That sounds good.  
3 Five minutes is great.

4 MS. McMAHON: Great. Let's do a  
5 bathroom break.

6 (A recess was taken.)

7 MS. McMAHON: So if we could go back to  
8 Exhibit 6, please.

9 AV TECHNICIAN: (Technician complies.)

10 MS. McMAHON: And if you could scroll  
11 down to page 5.

12 AV TECHNICIAN: (Technician complies.)

13 BY MS. McMAHON:

14 Q Ms. Dunham, you'll see that right below  
15 that horizontal line, it's an e-mail from Caryn  
16 from Thursday, August 9th, and then below that is  
17 an e-mail from you on August 7th, 2018 at  
18 5:44 p.m.; is that right?

19 A Yes.

20 Q And it appears that you're forwarding a  
21 couple e-mails between you and Cait Clarke from  
22 that same day; is that right?

23 A Yes.

24 Q So it looks like you and Cait set up a  
25 call for August 7th, where you write, "Cait, Ready

1 for your call."

2 A Yes.

3 Q And when Cait e-mails you back, she  
4 says, "Will make the call soon. Thank you for  
5 handling this so discreetly. I hope our plan  
6 works."

7 A Correct.

8 Q What plan was she referring to?

9 A I'm -- based on that information is I  
10 think a plan to move Caryn out of Charlotte and  
11 into another appropriate position.

12 Q Why --

13 A To put --

14 Q Go ahead.

15 A To put it more broadly, to resolve the  
16 situation.

17 Q And why did Cait say, "Thank you for  
18 handling this so discreetly"?

19 A Well, because confidentiality is a huge  
20 part of handling these difficult employment  
21 matters, and I believe that she took notice of the  
22 fact that I was not, you know, talking to  
23 The Washington Post or -- or -- or broadcasting  
24 this through the agency.

25 I mean, these are very delicate

1 matters, and I think part of my job was knowing  
2 who I needed to talk to who was in a position of  
3 power and could do something when I saw a problem.  
4 So I assume that's what she meant.

5 Q Did you or Cait discuss the plan that  
6 she's referring to with anyone else in the AO?

7 A I don't know.

8 Q Did you discuss it with anyone else in  
9 the Fourth Circuit or the FDO?

10 A No.

11 Q Then at 5:44 p.m. on August 7, it looks  
12 like you forwarded that chain to Caryn; is that  
13 right?

14 A Yes. I say, for your information.  
15 Yes.

16 Q Did you tell Cait that you were  
17 forwarding her e-mails to Caryn?

18 A I'm sure I told her that I would be  
19 sharing communications between us with Caryn so  
20 that Caryn could make decisions about what she  
21 should do, and you can see that Caryn says, "Do  
22 you think it's likely she will call this week?"

23 I mean, Caryn was preparing herself for  
24 discussions she would be having with her  
25 supervisors once they had talked to Cait.

1 Q So at the very top of that page --

2 MS. McMAHON: Sophia, if you could  
3 scroll up a little bit more above the horizontal  
4 line.

5 AV TECHNICIAN: (Technician complies.)

6 MS. McMAHON: There, that's perfect.

7 BY MS. McMAHON:

8 Q -- there's an e-mail from August 9th,  
9 2018, and that's an e-mail from you --

10 A Yes.

11 Q -- to Caryn, and you write, She did  
12 called -- I think a typo -- and Tony was very  
13 responsive. He did say the AFD job was in  
14 Charlotte and he has no space in Asheville. I  
15 proposed telework in the interim, and Cait is  
16 talking to him about that. Still working on it.  
17 He may apologize to you or talk about a solution,  
18 and if you are comfortable you can give him your  
19 views. My clear sense is that he is taking this  
20 very seriously.

21 Is that right?

22 A Yes.

23 Q So did you find this information out  
24 because Cait -- Cait talked to Tony, and then Cait  
25 called you; is that right?

1           A       I believe that's correct.

2           Q       And she said that Tony was very  
3 responsive?

4           A       Yes.

5           Q       Was it your general impression at that  
6 point that Tony was responsive in taking this  
7 seriously?

8           A       Well, I took Caryn at her word, and she  
9 was the one that had direct contact with him, so  
10 yes.

11          Q       Or do you mean Cait?

12                   Sorry, Ms. Dunham, you said --

13          A       Yes, yes. I'm sorry, Cait, not Caryn.

14          Q       It's confusing with the -- the  
15 alliteration.

16          A       Yeah.

17          Q       Was it your impression that Tony was  
18 working in good faith to help Caryn find a  
19 solution and resolve her claims?

20          A       At or -- at or around this time, yes, I  
21 believed that.

22          Q       And were you encouraging Caryn to work  
23 with him simultaneously to work out a solution?

24          A       I can't recall that, but that would be  
25 typical.

1           Q       And you also told Caryn in this e-mail  
2       that Tony said he has no space in Asheville; is  
3       that right?

4           A       Yes.

5           Q       Did you have any reason to believe that  
6       that wasn't true and that there was space in  
7       Asheville?

8           A       I had no information on that at all,  
9       but I was disappointed that there was no space in  
10      Asheville because I thought that would have been  
11      a -- a great solution, but, no, I had no -- I had  
12      no independent means to verify that.

13          Q       Did it make you reconsider the  
14      possibility of a transfer to Asheville as a  
15      potential solution for Caryn?

16          A       Well, there are two ways that a  
17      transfer could occur, at least two ways. One is  
18      if there's an open position, and Caryn would have  
19      filled it.

20                    There were other possibilities too. If  
21      through an informal settlement agreement the  
22      managers created a position in Asheville or  
23      allowed Caryn to perform the job that she had been  
24      performing in Charlotte from Asheville, that could  
25      have been a solution as well.

1                   So I didn't think that everything was  
2                   foreclosed because there was no current position  
3                   in Asheville.

4           Q       To be clear, the e-mail reads, "he has  
5                   no space in Asheville."

6           A       Right. Now, I -- I can't recall what  
7                   that meant. I assume either there's no position,  
8                   there's no desk and workspace. I -- I just can't  
9                   remember, but it was a clear no in terms of going  
10                  to Asheville.

11                   MS. McMAHON: So we'll scroll up to  
12                   page 1 -- sorry, page -- I'm sorry, not page 1,  
13                   page 3.

14                   AV TECHNICIAN: (Technician complies.)  
15           BY MS. McMAHON:

16           Q       This is an e-mail from Caryn to you,  
17                   Nancy --

18           A       Yes.

19           Q       -- from Friday, August 10th, at 9:44,  
20                   and --

21           A       Yes. I'm reading it now.

22           Q       Okay.

23                   THE WITNESS: Okay. I'm continuing to  
24                   read. Can you scroll up a little bit?

25                   AV TECHNICIAN: (Technician complies.)

1 THE WITNESS: Oh, thank you.

2 I'm sorry, scroll down. I apologize.

3 AV TECHNICIAN: (Technician complies.)

4 THE WITNESS: There, there. That's  
5 perfect.

6 Okay. And continue down.

7 AV TECHNICIAN: (Technician complies.)

8 THE WITNESS: Okay. I have finished  
9 reading that, and I do recall the e-mail.

10 BY MS. McMAHON:

11 Q So if you could go to the  
12 second-to-last full paragraph on page 3 that  
13 starts with "The sticking point for him."

14 A Yes.

15 Q "The sticking point for him is (4)  
16 transfer to Asheville duty station, as he says  
17 there is no office space in Asheville," and then  
18 Caryn continues on. She says that she would be  
19 fine with working remotely - "especially since I  
20 will be in appeals, which can be done from  
21 literally anywhere."

22 So did you and Caryn discuss the  
23 possibility of remote work as a solution?

24 A Yes, I think we did, and I think there  
25 was a time in which she actually was doing remote



1 work, that they permitted her to do that.

2 Q And she communicated that she was fine  
3 teleworking?

4 A I think she found it more favorable  
5 than being in the Charlotte office with him.

6 Q Did you discuss with her teleworking as  
7 a more permanent solution so that she didn't have  
8 to work in Charlotte, but, again, there's no  
9 office space in Asheville, so she didn't have a  
10 desk there?

11 A Looking back on this, I recall being a  
12 little skeptical that there was no office space in  
13 Asheville.

14 Now, I don't know what the situation  
15 was, I had never been there, but I've seen that  
16 used as an excuse previously in -- in many other  
17 cases, and I thought it was unlikely that office  
18 space was -- could not be found.

19 Often in federal buildings, there are  
20 multiple federal employees and multiple federal  
21 positions, and I just -- that made me skeptical,  
22 but --

23 Q You had no --

24 A -- I had no -- I had never been to  
25 Asheville and I had never seen the offices, but it

1       seemed a little unlikely.

2           Q       So if we could switch gears a little  
3       bit.

4           A       Sure.

5           Q       Do you know who Heather Beam is?

6           A       Is she in this --

7           Q       She is -- we're stepping away from the  
8       exhibit.

9           A       Oh, okay.

10          Q       It's confusing when it's on the screen.  
11       No problem.

12          A       Heather Beam sounds familiar, and if I  
13       were -- well, I'm not going to guess. My husband,  
14       who's been listening, said don't speculate, but,  
15       no, I -- I recognize the name, but I don't know  
16       who she is.

17          Q       So she's -- would it -- would it sound  
18       familiar if I told you that she was investigating  
19       Plaintiff's claims -- Plaintiff's wrongful conduct  
20       claim?

21          A       That sounds familiar, yes.

22          Q       And she was appointed as investigator  
23       in August of 2018?

24          A       That sounds familiar.

25          Q       Do you remember contacting the

1 investigator at any point?

2 A I recall a phone conversation with  
3 Heather, the investigator; and Amaal Scroggins,  
4 one of my senior lawyers; and me, yes.

5 Q What happened on that phone call?

6 A I do not recall that, but I -- what I  
7 do recall is I think Amaal and I both let her know  
8 that we thought this was a serious case and that  
9 we needed to have her do a really good job in --  
10 in her investigation.

11 Q Do you -- did you call her?

12 A I don't recall.

13 Q Did Amaal call her?

14 A I don't recall. I know that we had the  
15 phone conversation. I'm not sure -- sure who  
16 initiated the call.

17 Q Did you know Heather before that phone  
18 call?

19 A No, I did not. I think Amaal did,  
20 though.

21 Q So that was the first time you talked  
22 to her?

23 A I believe so, yes.

24 Q Besides for saying that you thought it  
25 was a serious case and she should do a good job

1 with the investigation, did you tell her anything  
2 else about her investigation?

3 A I believe we told her that we were in  
4 the process of trying to informally settle the  
5 case -- I thought that that was important for her  
6 to know -- that the case may not continue to  
7 progress along the formal complaint lines, but  
8 that we -- we were trying to create a situation  
9 where the case would settle and was acceptable to  
10 both parties.

11 Q Did you -- how -- how would that matter  
12 that it was -- like, why did you think it was  
13 important for her to know?

14 A Well, I think that she might have at  
15 any point been told that the matter was  
16 investigated -- I mean, was settled, and then her  
17 investigation would need to stop, and I think  
18 probably what we were saying is do a good job --  
19 you know, do the work as quickly as you can, and,  
20 you know, provide some information to all the  
21 parties that need it.

22 Q So at that point, did you think an  
23 investigation was -- was somehow interfering with  
24 the informal settlement discussions that you had  
25 been having?

1           A       No, not at all.

2           Q       Okay. You thought it was, you know,  
3 proper to be conducting a fact-finding  
4 investigation into these claims?

5           A       Yes.

6           Q       Did you think the investigation could  
7 help inform the settlement conversations?

8           A       I thought it was possible, yes.

9                   MS. McMAHON: Can we pull up Tab L,  
10 please?

11                   (Government Exhibit 8 was marked for  
12 identification and is attached to the transcript.)

13 BY MS. McMAHON:

14           Q       This is Exhibit 8, and this is an  
15 e-mail from you, Ms. Dunham, to Lee Ann Bennett  
16 from August 17th, 2018; is that right?

17           A       Yes.

18           Q       Do you want to take a moment to read  
19 it?

20           A       Yes.

21                   Okay.

22           Q       So in this e-mail, you describe the  
23 interaction you had with Heather Beam; is that  
24 right?

25           A       Yes, and -- and -- and the one earlier

1       that Amaal had with her before she knew it was the  
2       Charlotte matter.

3               Q       Does this help fresh your recollection  
4       about what happened?

5               A       It does.

6               Q       So is it fair to say that Amaal and  
7       Heather talked, and then you, Amaal, and Heather  
8       called her; is that right?

9               A       At that -- at that --

10              Q       Sorry, you and Amaal called her.

11              A       Called her, yes.

12              Q       And do you know -- do you remember what  
13       this e-mail was responding to from Lee Ann?

14              A       Yes.

15                    Lee Ann had a conversation with me and  
16       said that Heather had told her or communicated to  
17       her that -- some language like Heather was told to  
18       stand down, give her anything she wants, this is  
19       coming from the highest level of the agency, and I  
20       was clarifying and explaining to Lee Ann that that  
21       had not happened, that -- that Amaal made clear to  
22       me that she had never said anything like that, and  
23       I told her what exactly we talked about with  
24       Heather separately.

25              Q       You say in this e-mail that Tony and

1 Caryn had had formal -- informal resolution  
2 discussions which could be negatively impacted by  
3 a formal investigation.

4 Why do you think that?

5 A I don't remember exactly why. As I  
6 mentioned, sometimes when things get into a formal  
7 complaint mode, people's positions harden, and  
8 this was all very delicate at the moment, because  
9 Caryn was uncomfortable, Caryn was having  
10 conversations of her own in terms of trying to  
11 settle the matter, and that we had OGC involved,  
12 my office involved, Cait Clarke involved, to try  
13 to resolve the matter, and it -- you know, it --  
14 it was delicate.

15 Q And you write here, "I asked (did not  
16 direct) her to hold off investigating until I got  
17 more information."

18 A Right. And I -- I honestly cannot  
19 remember saying that, but that -- but if I did, I  
20 think all I would have been saying -- I never  
21 would have directed a judiciary employee about  
22 anything, because I would not have had the  
23 authority to do that.

24 I assume from this language that we  
25 might have been close to resolving this so that,

1     you know, getting back into a formal investigation  
2     may have been deleterious, but I cannot remember  
3     for sure. I'm just, in part, trying to recall  
4     based on this language.

5           Q     And you just mentioned earlier it would  
6     be -- typically, these types of fact-finding  
7     investigations help -- you would encourage them,  
8     and they would help resolve claims rather --

9           A     Yeah.

10          Q     -- than harm that?

11          A     Yes.

12          Q     And at this point, you -- you hadn't  
13     talked to Tony directly yet about any of Caryn's  
14     claims; is that right?

15          A     I don't believe I ever talked with Tony  
16     directly.

17          Q     Uh-huh. Did you talk to anyone else in  
18     the -- besides Lee Ann in the AO about your  
19     involvement in Caryn's situation?

20          A     Yes. I would have talked with Lee Ann,  
21     with Sheryl Walter, the general counsel. I would  
22     have talked -- I did talk with Cait. As I said, I  
23     talked originally with Laura Minor, who by that  
24     time, I think, had retired.

25                   So, yes, I had talked with a number of



1 people, including Amaal --

2 Q And --

3 A -- including Amaal in my office.

4 Q -- what was Amaal's role?

5 A Amaal is a -- was a senior civil rights  
6 advisor at the time I was there. She was my --  
7 basically my most-senior lawyer. She worked on a  
8 daily basis with court personnel and took  
9 questions and problems from them and discussed how  
10 to handle them, and so that was what happened in  
11 this case.

12 She got a call and did not realize it  
13 was the Charlotte matter that I had been working  
14 on, and then we had the conversation with Heather.

15 Q And the people who you had just named  
16 who you spoke to about this matter in the AO, did  
17 they communicate to you that you shouldn't have  
18 been involved in it?

19 A No. Never.

20 Q So everyone was comfortable with you  
21 advising Plaintiff -- or Caryn in having a role?

22 A I do not recall anyone saying that I  
23 should not be involved. In fact, you know,  
24 Lee Ann definitely wanted me to be involved,  
25 because she was concerned about the case.

1           Q       Uh-huh. And you did continue to talk  
2 to Caryn after August 17th and -- and throughout  
3 the next couple months, as you mentioned earlier?

4           A       I believe so, yes.

5           Q       Okay. And what was your impression at  
6 this point about how the investigation was going?

7           A       I really cannot recall that, other than  
8 what I see in writing in -- you know, in messages  
9 from me.

10          Q       Uh-huh. Do you remember what the  
11 status was of the informal negotiation discussions  
12 with Tony Martinez and Caryn in August -- in  
13 mid-August of -- of 2018?

14          A       Only based on what I have read this  
15 morning.

16          Q       Okay.

17               MS. McMAHON: Can you pull up Tab T,  
18 please?

19               (Government Exhibit 9 was marked for  
20 identification and is attached to the transcript.)

21 BY MS. McMAHON:

22          Q       So I believe this is Exhibit 9.

23          A       I can't see the very bottom of the  
24 document.

25               AV TECHNICIAN: (Technician complies.)

1 THE WITNESS: Oh, okay. There is  
2 nothing there. Okay.

3 BY MS. McMAHON:

4 Q Yeah. This is just one page, and this  
5 is an e-mail chain between you and Caryn from --  
6 starting on August 24th, 2018.

7 A Yes.

8 Q So you e-mailed Caryn saying, "What  
9 would be a good time for a call, so we can address  
10 your questions about the various processes?"

11 A Right.

12 Q And you set up a phone call with Caryn,  
13 right?

14 A Yes.

15 Q Do you remember what you discussed in  
16 that phone call with Caryn?

17 A Well, only that I can read -- we were  
18 discussing various processes, so I assume what we  
19 were talking to her about were her options if she  
20 wanted to bring a claim through the judiciary's  
21 process.

22 Q Had she told you that she was not  
23 interested in the informal settlement anymore?

24 A I don't think that she told me that. I  
25 think that the circumstances involving everyone,

1 we had not reached a solution.

2 Q What was her sticking point?

3 A I don't recall, and I don't know if it  
4 was her -- if it was her sticking point or her  
5 manager's sticking point. I just don't recall.

6 Q Okay. At this point, were you still in  
7 favor of trying to work out an informal  
8 settlement?

9 A Yes.

10 Q And just to be clear on this, the  
11 benefits of the informal settlement is that  
12 it's -- it helps both sides; is that right?

13 A It can, if it's properly crafted, help  
14 both sides.

15 Q In Caryn's --

16 A And it is appropriate -- when an  
17 employer gets allegations that are credible about  
18 sexual harassment, what the law requires is that  
19 they -- that the employer ceases the conduct that  
20 is of concern and keeps the plaintiff or the --  
21 the employee in the position they would have been  
22 absent harassment.

23 Q Were you considering how -- so you  
24 would consider how that would be beneficial to the  
25 employee who's alleging sexual harassment, right?

1           A       Yes, certainly.

2           Q       And were you considering at the time  
3 how a settlement would be beneficial to the  
4 federal defender's Office?

5           A       Yes. And to the AO and to the  
6 judiciary, in general.

7           Q       And how would a settlement have  
8 benefited them?

9           A       Well, as I said, sexual harassment at  
10 that time was in the news. It was a hot topic in  
11 Congress, in -- for example, our director had to  
12 go and testify before Congressional committees on  
13 the issue of harassment in the judiciary, and here  
14 was someone I believed with her background as a  
15 District Court clerk, a U.S. Court of Appeals  
16 clerk, a former U.S. Supreme Court Fellow, those  
17 allegations, had they become public, would have  
18 been -- could have been very damaging to the -- to  
19 the judiciary.

20                   And so I was concerned about that, and  
21 I thought that informally settling the matter  
22 would have solved Caryn's problem and also been  
23 beneficial for the judiciary.

24           Q       How does Caryn's background as a clerk  
25 and as a Supreme Court Fellow make her allegations

1 more credible?

2 A I didn't say more credible. I think  
3 that it would have attracted attention from the  
4 media and others if they had become public.

5 The worst-possible situation, I think,  
6 for an employer to be in is to have allegations  
7 made against it that are credible by a person  
8 who -- whom the news would consider to be  
9 newsworthy, and her former positions would have  
10 given her that credibility had she gone public,  
11 and I think every- --

12 Q Did you ever talk --

13 A I think everybody realized that.  
14 Certainly, senior management realized that.

15 Q Did you ever talk to Caryn about going  
16 public with her allegations?

17 A I believe that we talked about that as  
18 one possibility. I mean, there are -- a plaintiff  
19 or an employee who is -- experiences workplace  
20 discord has a lot of different options, and that  
21 is one of them.

22 I don't necessarily think that's a  
23 great option in most cases, but, yeah, we probably  
24 talked about that as one option.

25 Q Back to -- back to the exhibit.

1                   So you discussed the processes with  
2     Plaintiff -- or with Caryn on this call, and were  
3     you aware at the time that she had an interview  
4     with Heather Beam set up for August 30th, roughly  
5     six days after this e-mail?

6           A       I don't remember.

7           Q       You don't remember discussing the  
8     interview with her?

9           A       I don't remember, no.

10          Q       Do you remember if she had any  
11     hesitations about proceeding with that interview?

12          A       I can't say for certain under oath.  
13     I'm just -- I would be speculating.

14          Q       No problem.

15                   And do you remember any -- well, would  
16     you generally advise an employee to participate in  
17     a formal fact-finding process when they are  
18     alleging conduct such as sexual harassment?

19          A       It would depend on the circumstances,  
20     so I can't definitively answer that, but the  
21     processes are in place to inform and resolve  
22     workplace disagreements. And so, in general, I  
23     would think that -- I believe that there was a  
24     process in place that might have helped resolve  
25     this.

1           Q       Were you aware when Plaintiff filed a  
2       report -- Plaintiff her- -- sorry, Caryn herself  
3       filed a report of wrongful conduct under  
4       Chapter IX and a request for counseling under  
5       Chapter X of the EDR Plan on September 10th?

6           A       I recall that she initiated the  
7       process. I couldn't have told you, though, when  
8       it was.

9           Q       Did you recommend that she initiate the  
10      process at any point?

11          A       I don't remember doing so.

12          Q       Do you remember talking to her about  
13      initiating an EDR claim before Caryn filed --  
14      officially filed her EDR claim?

15          A       I don't recall doing that, but that  
16      would have probably been one of the things we  
17      would have discussed in this conversation with  
18      Amaal, because that was one of the processes she  
19      had at her desire to initiate.

20                 MS. McMAHON: Can we pull up Tab U,  
21      please?

22                 (Government Exhibit 10 was marked for  
23      identification and is attached to the transcript.)

24      BY MS. McMAHON:

25          Q       This is Exhibit 10, and this is -- it's



1 really just one page.

2 A Okay.

3 Q An e-mail -- another e-mail chain  
4 between you and Caryn starting on October 15th,  
5 2018. I'll give you a moment to read.

6 A Okay. Thank you.

7 Okay.

8 Q So it appears from this e-mail that  
9 Caryn e-mailed you letting you know the  
10 investigation was proceeding and that she met with  
11 Heather Beam; is that fair?

12 A Yes.

13 Q Do you remember hearing anything else  
14 from Caryn about the investigation or any issues  
15 that she was having with the investigation?

16 A No.

17 Q Did you have any reason -- any reason  
18 to doubt that those overseeing the investigation,  
19 such as James Ishida or Chief Judge Gregory, were  
20 not operating in good faith and proceeding as  
21 contemplated by the EDR Plan?

22 A No. Not that I recall.

23 Q So it seems on -- if you scroll to the  
24 top, on October 15th, 2018, you write to Caryn,  
25 "Amaal and I will call you tomorrow to discuss

1 your questions."

2 Do you remember what these questions  
3 were?

4 A Well, I assume they're questions that  
5 are contained in what she forwarded to me about  
6 her concerns with other EDR claims that were being  
7 filed and her involvement as a witness.

8 Q Do you remember if you discussed --  
9 discussed her going back into the office to move  
10 her things?

11 A This e-mail sounds familiar, yes,  
12 and...

13 THE WITNESS: Can you scroll up a  
14 little, please?

15 AV TECHNICIAN: I believe that's it.

16 THE WITNESS: I'm trying to look at the  
17 second paragraph, "Second, I received an email" --

18 MS. McMAHON: Yeah, scroll down just a  
19 little bit.

20 AV TECHNICIAN: (Technician complies.)

21 THE WITNESS: Ah, there you go. Okay.  
22 Perfect. Thank you. Yes.

23 So she had concerns, and I'm assuming  
24 we discussed them with her.

25 BY MS. McMAHON:

1           Q       Did she say anything about whether she  
2       ever planned to go back into the federal  
3       defender's office in Charlotte?

4           A       I don't recall that.

5           Q       Did she say anything about whether she  
6       planned to continue working at the federal  
7       defender's office?

8           A       I don't recall that either.

9           Q       Did you have any reason to doubt that  
10      the investigation and the EDR process was being  
11      conducted in an appropriate way?

12          A       No, I don't believe so. Not at that  
13      time.

14                   MS. McMAHON: You can take down the  
15      exhibit, please.

16                   AV TECHNICIAN: (Technician complies.)

17      BY MS. McMAHON:

18          Q       So when was the last time that you  
19      talked to Caryn?

20          A       I don't recall, but it must have been  
21      in early to mid 2019, and I'm recalling that I had  
22      a lot of responsibilities to take care of when I  
23      knew that I was going to be retiring at the end of  
24      May, so I was very focused on handling those  
25      responsibilities.

1 I had appointed Amaal Scroggins as my  
2 acting fair employment practices officer, and so  
3 she was beginning to pick up some of those  
4 responsibilities, and I was filling out retirement  
5 forms and a lot of other things that needed to be  
6 done. So I probably would have talked to Caryn,  
7 again, early to mid-2019, but I can't specifically  
8 recall.

9 Q What date did you retire on?

10 A My last day physically in the office  
11 was May 28th, I believe, a Wednesday, of 2019.

12 Q Did Caryn tell you how her claims were  
13 resolved?

14 A No, I don't believe so.

15 Q Did she tell you -- did Caryn tell you  
16 that she was going to mediation?

17 A I don't recall that.

18 Q Did Caryn ever tell you that she  
19 accepted a Fourth Circuit clerkship as a result of  
20 the mediation?

21 A No, I don't -- I don't recall that at  
22 all.

23 Q Did Caryn ever follow up with you about  
24 not pursuing a complaint under Chapter X of the  
25 EDR Plan?

1           A       No.

2           Q       Ms. Dunham, is there anything else that  
3 you wanted to add or say in this deposition?

4           A       No, not that I can think of right now.

5           MS. McMAHON: Well, thank you so much  
6 for your time. That's all from the Government.

7           THE WITNESS: Okay.

8           Oh, my husband just reminded me that my  
9 last day was actually May 29th, 2019. We took a  
10 couple of vacation days, and we were in Hawaii by  
11 the following day, on the 30th.

12          MR. GERSEN: Great. Thanks so much.

13          I'm going to suggest that we take a  
14 15-minute break, if that's okay. We've covered a  
15 lot of ground that we were going to cover, and so  
16 if we can cull that out, I think we can save some  
17 time if we can take a little bit of extra right  
18 now.

19          Is that okay with everyone?

20          MS. McMAHON: Yeah, that's great.

21          (A recess was taken.)

22          EXAMINATION BY COUNSEL FOR PLAINTIFF

23          BY MR. GERSEN:

24          Q       Good afternoon, Ms. Dunham. My name's  
25 Jacob Gersen. I'm one of the attorneys

1 representing the Plaintiff in this case, as you  
2 know.

3 I know you've been answering questions  
4 for a long time, so I'll try not to take more of  
5 your time than is necessary.

6 A Thank you.

7 Q I may pause occasionally to go back  
8 over something, and if -- just to make sure that  
9 we've covered it, but I'll try not to do too much  
10 of that.

11 A Okay.

12 Q And just like was true as when the  
13 Government was asking you questions, if there's  
14 anything you're not sure about or I've asked a  
15 confusing question, please just ask me to clarify.

16 A I will do that.

17 Q Great. And, similarly, if you need to  
18 take a break at any time, just ask. Otherwise,  
19 we'll probably try to go for about the same  
20 duration.

21 A Okay.

22 Q Okay. Great.

23 Can I ask when you were first contacted  
24 by the Department of Justice attorneys about the  
25 deposition?

1           A       It was within the last two months, I  
2 believe. I was aware of the --

3           Q       Uh-huh.

4           A       I was aware of the case, because the  
5 AO's Office of General Counsel contacted me and  
6 let me know that the case was proceeding in the  
7 Western District of North Carolina, and then about  
8 two months ago, I think, I was contacted by  
9 Ms. McMahon's office.

10          Q       And how did they contact you? Do you  
11 recall?

12          A       By e-mail.

13          Q       By e-mail.

14                   And you don't happen to have that  
15 e-mail with you, by chance?

16          A       I do.

17          Q       Would you mind pulling it up?

18          A       Yep. Okay. Let's see.

19                   Okay. That first e-mail was March 31st  
20 of this year.

21          Q       March 31st of this year. Thank you.

22                   Could I trouble you to read it?

23          A       Yes.

24                   The e-mail to me said, I hope this --  
25 Ms. Dunham, I hope this e-mail finds you well. I

1 am one of the Department of Justice attorneys  
2 representing the AO in the Strickland v. U.S. case  
3 brought by Caryn Devins Strickland.

4 Ms. Strickland's attorneys have  
5 indicated they would like to take your deposition  
6 and have asked us to reach out to you to see if  
7 you're willing to appear. If so, we are happy to  
8 take care of scheduling logistics and could assist  
9 with your preparation.

10 We would also appreciate it if you  
11 would be willing to talk with us about the events  
12 that gave rise to this litigation and could  
13 schedule a quick call at your convenience.

14 Thank you for your time. All the best,  
15 Rachael.

16 Q Thank you.

17 And did you, in fact, talk with the DOJ  
18 attorneys?

19 A Only by e-mail.

20 Q And what was the content of those  
21 subsequent e-mails?

22 A I wrote back to Rachael Westmoreland.  
23 I said, I'm sorry, but I don't think I can be of  
24 any help to the Government in this particular  
25 case. I will contact Ms. Strickland's attorney



1 directly and offer to testify for her, although  
2 given my retirement in Hawaii, that would not be  
3 my preference.

4 And then I said, I respectfully  
5 recommend that you settle this matter and make  
6 Ms. Strickland whole.

7 Q Thank you.

8 And I believe you testified -- you can  
9 correct me if I'm wrong -- that you and the  
10 Plaintiff or Caryn are otherwise not in contact?

11 A No. I have not talked to Caryn at all  
12 since I retired, and given the fact I was pretty  
13 sure that I would be subpoenaed to testify today,  
14 I thought it better that I not discuss the  
15 substance of the case with any of the parties.

16 Q I understand.

17 How did the Government respond when you  
18 said that you thought they should settle the  
19 matter?

20 A They did not say anything about that.  
21 They let me know that they would be subpoenaing me  
22 if I did not agree to testify, so I let her know  
23 if -- if you and the Plaintiff's attorney agree on  
24 the terms, I'll voluntarily testify.

25 Q Okay. Thank you.

1                   And did you, in fact, ever contact any  
2                   of Ms. Strickland's attorneys?

3                   A        I did not. I changed my mind, because  
4                   I just thought it was more prudent to have  
5                   everyone ask me the questions that they wanted to  
6                   ask and have me truthfully answer those questions.

7                   Q        I understand.

8                             Did the Department of Justice ever say  
9                   that we reached an agreement?

10                  A        They said that -- let's see -- we have  
11                  agreed with Plaintiff's counsel to conduct your  
12                  deposition via Zoom on April 17, 2023, and then  
13                  they served the subpoena and the deposition  
14                  notice.

15                  Q        Would you be willing to share that  
16                  e-mail with us?

17                  A        Yes.

18                             What -- what the Department of Justice  
19                  said?

20                  Q        Yes, ma'am.

21                  A        Okay. So on April 10th, Rachael  
22                  Westmoreland said, Ms. Dunham, Thank you for your  
23                  cooperation. We have agreed with Plaintiff's  
24                  counsel to conduct your deposition via Zoom on  
25                  April 17, 2023. Attached are a copy of the

1 subpoena and a deposition notice with additional  
2 details.

3 Please confirm that you accept service  
4 of the subpoena versus e-mail. If we do not  
5 receive that confirmation, we will have a copy of  
6 the subpoena served on you personally.

7 All the best --

8 Q Thank you.

9 A -- Rachael.

10 Q Sorry to interrupt.

11 Thank you.

12 And would you be willing to e-mail or  
13 forward it to us?

14 A Sure.

15 Q Great. Thank you so much.

16 A Uh-huh.

17 Q The Government asked about your  
18 availability for a deposition on April 25th to  
19 28th?

20 A Right.

21 Well, I --

22 Q Did they?

23 A Yes. They gave me a number of options.  
24 The 17th, today, is the only day that I was  
25 available, and I will be out of the country

1 beginning on April 24th and continuing for about  
2 two weeks.

3 Q Understood. Thank you.

4 And did you discuss the subject of your  
5 testimony for the deposition with the Government?

6 A I did not.

7 Q Thank you very much.

8 MR. GERSEN: Could we please try to put  
9 up Exhibit 3, which should be U.S. page 5359 --

10 This was Exhibit 3 from the initial  
11 deposition from Plaintiff's side. We can  
12 reintroduce it, or just reference it as needed.

13 (Discussion off the record.)

14 MS. McMAHON: We have no objection to  
15 that.

16 AV TECHNICIAN: Okay. So I will go  
17 ahead and mark it as Plaintiff's Exhibit 3 for  
18 this deposition. Stand by.

19 (Plaintiff's Exhibit 3 was marked for  
20 identification and is attached to the transcript.)

21 BY MR. GERSEN:

22 Q Are you able to see that, Ms. Dunham?

23 A I am.

24 Q Okay. Have you seen this e-mail  
25 before?

1           A       No.

2                   (The Reporter clarified the record.)

3           THE WITNESS: I have not.

4 BY MR. GERSEN:

5           Q       Could I ask that you take a moment to  
6 read it?

7           A       Sure.

8                   Okay. I've finished.

9           Q       Okay. I just want to reference a few  
10 portions of it. I'm going to ask you about them,  
11 if that's okay.

12          A       Uh-huh. Yes.

13          Q       The e-mail says that you allegedly  
14 instructed one of your staff to tell Tony Martinez  
15 that he needed to give the complainant, Caryn  
16 Devins, whatever it is that she is asking for,  
17 telework, relocation, et cetera, before Ms. Devins  
18 hires an attorney or goes to the press.

19                   Do you see that portion?

20          A       I do.

21          Q       Have I read it accurately?

22          A       You've read it accurately.

23          Q       Who do you believe alleged that?

24          A       I assume Tony Martinez alleged that.

25          Q       Did you, in fact, instruct your staff

1 to tell Tony Martinez that he needed to give the  
2 complainant whatever she was asking for?

3 A This is patently false.

4 Q Did your staff say any of those things?

5 A To my knowledge, no, and nor would they  
6 ever.

7 Q Did you yourself say any of those  
8 things?

9 A I did not.

10 Q Do you know how Mr. Ishida could have  
11 gotten that impression?

12 A I do not.

13 Q The e-mail says that you reportedly  
14 said this was not a request but an order that  
15 comes from the highest levels of the AO.

16 Do you see that passage?

17 A I do.

18 Q Did you, in fact, say that?

19 A I did not, nor would I ever have said  
20 something like that.

21 Q And to the best of your knowledge, did  
22 any member of your staff or the AO say that?

23 A No, they did not.

24 Q So someone who reported that you or  
25 your staff said that -- those things would be

1 misrepresenting the truth; is that right?

2 A Yes.

3 Q With whom outside your office did you  
4 or your staff communicate about the Caryn Devins  
5 matter?

6 A I want to make sure I understand.

7 With whom at the AO?

8 Q Outside -- outside the AO.

9 A Oh, outside the AO.

10 I believe that, as we mentioned  
11 earlier, we talked to Heather Beam, and that was  
12 Amaal Scroggins and myself.

13 I don't believe that I had any  
14 conversations with the -- the Charlotte office or  
15 anyone else in the courts.

16 Q And your view is that it was likely  
17 that Tony Martinez was the one who was alleged  
18 making those allegations?

19 A Well, reading this, yes, I -- it looks  
20 like Tony Martinez is reporting this allegation.

21 Q And reporting it to Mr. Ishida?

22 A I'm assuming so, yes.

23 Q Who then reported it to Chief  
24 Judge Gregory?

25 A Yes.

1           Q       And do you recall the roles of Chief  
2 Judge Gregory and Mr. Ishida in the EDR process?

3           A       Yes. They are -- they are the --  
4 basically, the -- the highest level of officials  
5 in the EDR process that Caryn was involved in.

6           Q       Mr. Ishida was the EDR coordinator, and  
7 Chief Judge --

8           A       Yes.

9           Q       -- Gregory was the supervisor?

10          A       Yes.

11          Q       Yes. Thank you very much.

12                   Given your experience in helping to  
13 enforce the civil rights laws and employee --  
14 protect employees from discrimination, do you have  
15 a view of why someone would misrepresent  
16 communications from your office in this way?

17          A       Well, again, it's -- I'm speculating,  
18 but I am assuming that they were not happy with my  
19 position on Caryn Devins Strickland's case, and I  
20 believe -- and I'm -- actually, I'm shocked to  
21 read this. It's amazing what is happening behind  
22 the scenes.

23                   But, yeah, I mentioned earlier that one  
24 of the ways that someone can try to interfere with  
25 my office's function is to call one of my



1 supervisors, and Jim Duff was definitely one of my  
2 supervisors. But I never knew any of this.

3 Q And why are you shocked?

4 A It is really -- first of all, because  
5 it's not true, but second of all that -- that  
6 there would be an attempt to interfere with the  
7 role that my office had and -- and the  
8 EDR process.

9 Q Mr. Ishida describes -- describes your  
10 work as an interference; is that right?

11 A He says, yes, "tried to obstruct an  
12 ongoing Fourth Circuit EDR investigation."

13 Q How would either -- first of all, how  
14 would this be an interference with the  
15 EDR process?

16 A Well, it looks like -- again, these  
17 allegations are false, but that I told someone on  
18 my staff to give -- to tell Tony Martinez to give  
19 Caryn Devins whatever she's asking for.

20 Q More -- more straightforwardly, did you  
21 try to obstruct an EDR process in any way?

22 A Absolutely not.

23 Q Would you ever try to obstruct an  
24 EDR process in any way?

25 A Never.

1           Q       Do you understand any of your  
2 activities throughout this matter as plausibly  
3 interfering or obstructing an EDR process?

4           A       Absolutely not.

5           Q       Okay. Could you please read the  
6 sentence in the middle of the page aloud starting,  
7 "After some checking"?

8           A       Yes. I am reading that sentence.  
9 I'm done.

10          Q       Could you please read it aloud, just  
11 for the record?

12          A       "After some checking, Tony discovered  
13 that this 'demand' did not come from the highest  
14 levels of the AO, but from Ms. Dunham, who  
15 coincidentally is a friend of the complainant,  
16 Caryn Devins."

17          Q       Were you and Caryn Devins friends at  
18 this point?

19          A       We were never friends.

20          Q       Are you friends today?

21          A       I would not call her a friend. She was  
22 a person that was employed by the Federal Public  
23 federal defender's Office with whom I interacted  
24 on her case.

25                   I liked and respected her and wanted to

1 try to resolve the matter as my job  
2 responsibilities called for, but, no, she was  
3 never a personal friend.

4 Q Did you know her before she came to  
5 you?

6 A I never met her. I never -- I don't  
7 believe I ever had any contact with her before she  
8 came to me.

9 She and I were probably -- we may have  
10 overlapped when she was a U.S. Supreme Court  
11 Fellow, but without looking at the dates, I can't  
12 say. But I never met her in that role.

13 Q Did you ever tell Tony Martinez that  
14 you were friends?

15 A No, never.

16 Q Did you ever tell anyone that you were  
17 friends?

18 A Never.

19 Q You said before that you were shocked  
20 or found it shocking that this -- and that this  
21 e-mail might interfere with the EDR process.

22 How did you mean?

23 A Well, Judge Gregory was going to be  
24 deciding this case eventually, and the fact that  
25 are falsehoods in here is somewhat concerning --

1 concerning.

2 Q And which falsehoods exactly?

3 A Well, that I tried to obstruct an  
4 ongoing Fourth Circuit EDR investigation, that  
5 this was a directive that came from the highest  
6 levels of the AO, that it was a demand, and that I  
7 am a friend or was a friend of the complainant.

8 Q And why would it be concerning that  
9 there was a falsehood introduced about those  
10 things?

11 A Well, I think the roles of Mr. Ishida  
12 and Judge Gregory were as neutral adjudicators,  
13 and I think having these falsehoods presented to  
14 them could interfere with decisions they made in  
15 the future.

16 Q You'd -- you'd be concerned that an  
17 e-mail like this with clear falsehoods could  
18 affect the neutrality of either Mr. Ishida or  
19 Judge Gregory, both key players in the  
20 EDR process; is that correct?

21 A I would be concerned retrospectively  
22 and having seen this for the first time today that  
23 that could have happened.

24 Q And is it reasonable to think that  
25 Chief Judge Gregory receiving this communication

1 might be influenced by it in his adjudication or  
2 judgments?

3 A I would be speculating if I answered  
4 that question.

5 I do not know Judge Gregory personally,  
6 and -- and I cannot say for sure, but even reading  
7 it today, it's concerning.

8 Q Understood.

9 Given your experience with workplace  
10 discrimination claims which you testified about  
11 earlier, do you have a view of why someone would  
12 inaccurately report that you or someone from your  
13 office complaining -- and the complainant, someone  
14 who was complaining about discrimination, were  
15 friends?

16 I could rephrase it. That would be  
17 useful.

18 Given your experience -- extensive  
19 experience with workplace discrimination claims,  
20 do you have a view of why someone would  
21 inaccurately report that a complainant complaining  
22 of workplace discrimination and you or your office  
23 were friends?

24 A I would speculate that such an  
25 allegation would diminish my observations about

1 the case and possibly the -- the Plaintiff's  
2 observations on her own face.

3 Q So you interpret the -- that sentence  
4 as undermining your own credibility and  
5 legitimacy?

6 A Yes, I do.

7 Q And do you interpret that sentence as  
8 undermining the legitimacy and credibility of the  
9 complainant, Caryn?

10 A Yes.

11 Q And would or does this letter make you  
12 concerned that someone misrepresented facts to  
13 undermine the advice given by the Office of Fair  
14 Employment Practices?

15 A Yes.

16 Q In your experience with workplace  
17 discrimination claims, why would someone want to  
18 undermine legitimacy of an interaction with the  
19 Office of Fair Employment Practices?

20 A There are so many possibilities, it's  
21 hard for me to answer that.

22 Q Understood. Thank you.

23 Is one reason that someone would want  
24 to undermine the credibility or legitimacy of an  
25 interaction with your Office of Fair Employment

1 Practices to protect an accused party in their  
2 office?

3 A Yes, definitely.

4 Q Is reaching out to your office for  
5 advice generally considered something that could  
6 interfere in the EDR process?

7 A Absolutely not. Again, my attorneys  
8 that interact regularly on a daily basis with the  
9 courts and court staff have conversations about  
10 cases, they provide guidance, and that is never  
11 considered interference.

12 Q Is there anything wrong with a federal  
13 public defender employee coming to your office for  
14 advice about what to do about sexual harassment or  
15 workplace discrimination?

16 A No.

17 Q Is that, in fact, what an employee of  
18 the federal public defender or the judiciary ought  
19 to do if they are concerned about workplace  
20 discrimination?

21 A Yes.

22 Q You told Ms. McMahon that nobody told  
23 you that you shouldn't be involved in this matter.

24 Seeing this e-mail, does it refresh  
25 your memory on whether you were told at any point

1 to stop being involved?

2 A No. I was -- I absolutely was never  
3 told by Ms. Bennett or Mr. Duff to stop being  
4 involved in this case. I'm sure I would have  
5 remembered that, and that would have been very out  
6 of character for either of them.

7 Q Can you tell me about the conversation  
8 with James Duff and tell me who James Duff is  
9 again, please?

10 A James Duff is the former director of  
11 the AO. He was my second-level supervisor, and I  
12 probably had one conversation with him, maybe two,  
13 about this case.

14 I recall him asking me to send some of  
15 the communications that Caryn had sent to me so  
16 that he could look at them himself, and I did  
17 that, but other than that, I never discussed the  
18 case with him.

19 Q And do you recall when that was?

20 A Oh, it had -- I think it must have been  
21 in -- in the spring of -- or early 2019, but I  
22 can't tell you exactly when.

23 Q And what did you have -- what did he  
24 think about those communications?

25 A Would -- I'm sorry, would you re- --



1 re-question -- restate the question?

2 Q Yes.

3 You sent him -- you said, I believe,  
4 that you sent him what Caryn sent you; is that  
5 correct?

6 A Yes.

7 Q And my question is: What was his  
8 reaction to those -- to that material?

9 A He did not react to that.

10 I believe he asked me at an AO party if  
11 I could send him certain documents that Caryn had  
12 provided to me because he -- I'm assuming he  
13 wanted to familiarize himself with the case, and  
14 so I did so. He did not say anything more to me  
15 about the case.

16 Q And did you reach out to him, or did he  
17 reach out to you?

18 A He reached out to me.

19 Q He reached out to you about the matter.

20 And do you happen to know how he  
21 learned about the case?

22 A I'm assuming, again, based on the  
23 overlying context, that it was from either Lee Ann  
24 Bennett, his deputy, or the general counsel, or  
25 both.

1           Q       From Lee Ann Bennett or the general  
2 counsel or both; is that correct?

3           A       Yes.

4           Q       And did Lee Ann -- can you remind me  
5 who Lee Ann Bennett is once more?

6           A       She was Jim Duff's deputy director.

7           Q       Got it.

8                   And she never expressed a concern to  
9 you?

10          A       Oh, she did express a concern to me.

11                   When we first discussed these  
12 allegations in -- in meetings with her and me  
13 privately, as well in meetings with her and the  
14 general counsel's office and me, yes, she  
15 expressed concerns.

16                   And I recall specifically her noting --  
17 and, again, she's not a lawyer, but I thought it  
18 was incredibly intuitive that she understood the  
19 power differential and how Mr. Mar- -- Mr. Davis'  
20 attempt to control Caryn was of concern.

21          Q       And when you say "of concern," do you  
22 mean of concern with respect to workplace  
23 discrimination and sexual harassment?

24          A       Yeah. Yes.

25          Q       Thank you.

1                   And did she ever express concern to you  
2                   about the propriety of your communication with  
3                   Caryn?

4                   A        No.

5                   Q        And did Sheryl Walter ever express  
6                   concern to you about your involvement or conduct  
7                   in this matter or case?

8                   A        Not that I recall, and that would be  
9                   very unlike Sheryl Walter. We worked --

10                  Q        How so?

11                  A        We worked very cooperatively, and we  
12                  recognized that we had different roles.

13                         It was -- Sheryl Walter's position was  
14                   to protect and defend the AO and the judiciary.  
15                   It was my role to provide guidance to senior  
16                   officials on the civil rights laws, and generally  
17                   we agreed, I mean, and I worked very cooperatively  
18                   with both Sheryl Walter and Bill Meyers, and  
19                   considered both of them trusted and valued former  
20                   colleagues.

21                  Q        Understood. Thank you.

22                         You mentioned that control relates to  
23                   sexual harassment, and that both you and I think  
24                   Lee Ann Bennett were concerned about that; is that  
25                   correct?

1           A       Yes.

2           Q       Could you say a little bit more about  
3       that?

4                    You said, I think, that that was part  
5       of classic sexual harassment. Could you explain a  
6       bit about what you mean?

7           A       Yes, and I will tell you a personal  
8       anecdote that I think does illustrate it.

9                    Since I have retired, I have watched a  
10      lot of the news stories on sexual harassment,  
11      including the allegations against Governor Cuomo  
12      in New York and what led to his resigning his  
13      position, and there were a number of women that  
14      made allegations against him.

15                   And I recall thinking when I heard  
16      about them, there was a woman who alleged that he  
17      groped her, so there was a physical assault, but  
18      there was also another woman who alleged that he  
19      had made her uncomfortable by his obvious sexual  
20      and romantic interest in her.

21                   There was never any groping or physical  
22      assault in that case, and I remember thinking that  
23      is exactly what happened with Caryn Devins. No  
24      physical touching, no groping, but nevertheless  
25      a -- a desire to control her and -- and an obvious

1 interest in her either sexually or romantically.

2 And I thought, boy, I -- I will say  
3 this: I said to myself, I was right in this case,  
4 because I did get some -- I did get some feedback  
5 from one of the staff attorneys in OGC, who -- who  
6 I often disagreed with, that this was not a  
7 problem, that this case -- you know, I was not  
8 assessing this case properly, and I remember  
9 thinking, you know what, I was right.

10 Q Understood. Thank you.

11 Did Caryn ever tell you that other  
12 employees observed the kind of interest in her  
13 that you just described?

14 A No, never.

15 Q Okay. Thank you.

16 I want to --

17 MR. GERSEN: Could we introduce one --  
18 our next exhibit, please?

19 Just give me one moment. Sorry.

20 THE WITNESS: Sure.

21 MR. GERSEN: I'm sorry, I'm having a  
22 technical glitch. Just bear with me for one  
23 minute. Thank you so much.

24 THE WITNESS: Sure.

25 MR. GERSEN: Okay. Could we actually

1 put up Government's Exhibit 4?

2 AV TECHNICIAN: So, Counsel, to  
3 confirm, was that the Exhibit 4 we marked earlier  
4 today, or the one you uploaded just now?

5 MR. GERSEN: It was the one marked  
6 earlier today by the Government.

7 AV TECHNICIAN: I understand. Thank  
8 you. Stand by.

9 BY MR. GERSEN:

10 Q Okay. Do you remember this exhibit  
11 from earlier today?

12 A I do.

13 Q Great.

14 MR. GERSEN: Now, apologies, but could  
15 we switch to our exhibit that we just uploaded?

16 (Discussion off the record.)

17 MR. GERSEN: We are struggling with our  
18 exhibits.

19 Could we please take a five-minute  
20 break so we don't waste anyone's time?

21 THE WITNESS: Sure.

22 MR. GERSEN: Thank you so much.

23 (A recess was taken.)

24 MR. GERSEN: That last exhibit need not  
25 be withdrawn. That's the correct exhibit and

1 correct destination.

2 (Plaintiff's Exhibit 39 was marked for  
3 identification and is attached to the transcript.)

4 MR. GERSEN: So please display what is  
5 designated as Exhibit 39.

6 AV TECHNICIAN: Yes. Stand by,  
7 Counsel. I need to re-mark it.

8 MR. GERSEN: We apologize for the  
9 confusion. Thank you for bearing with us.

10 THE WITNESS: No worries.

11 MR. GERSEN: We can start at the top on  
12 the first page. Thank you.

13 AV TECHNICIAN: (Technician complies.)

14 BY MR. GERSEN:

15 Q Are you able to see that -- that  
16 e-mail, Ms. Dunham?

17 A Yes, I am.

18 Q Would you mind just reading the  
19 information on the page?

20 A It needs to go down, back to the  
21 exhibit that was a text, I believe.

22 Q Actually, I'm just interested in that  
23 first part, the subject.

24 A Oh, the subject. Yes, I see that.

25 Quid pro quo e-mail, and then there are two

1 attachments.

2 Q Great.

3 The rest of the e-mail is blank?

4 A Yes.

5 Q And do you recall what those  
6 attachments were?

7 A Yes. I believe that was the text about  
8 I pay for stay or I pay to stay, something like  
9 that.

10 MR. GERSEN: And if we could scroll  
11 down to the next page, which is the attachment.

12 AV TECHNICIAN: (Technician complies.)

13 MR. GERSEN: Great. Thank you.

14 BY MR. GERSEN:

15 Q Do you recognize this text?

16 A I do.

17 Q And this is an e-mail that Caryn sent  
18 to you?

19 A Yes.

20 Q How do you understand that Caryn  
21 interpreted this e-mail?

22 A I think she interpreted it as -- from  
23 J.P. Davis, if you do what I want you to do, you  
24 will be appropriately compensated for the better.

25 Q Is that what she meant by "quid pro



1       quo" in the subject line?

2             A       Yes, I believe it is.

3             Q       And would you mind reading the text?  
4       It's relatively brief.

5             A       It says, Dude, you're shooting high  
6       with a GS-15 [sic]. Not least of all since you'll  
7       need 5 more years of federal service to qualify  
8       for it. But fret not, I have a plan...just  
9       remember I deal in pay-for-stay, and then an emoji  
10      smile.

11            Q       Thank you.

12                    Do you know if Mr. Davis was correct  
13      that she needed five more years of service to  
14      qualify for a G15?

15            A       I -- I do not know, but that -- given  
16      her experience, that sounds unlikely.

17            Q       And would that be relevant to how she  
18      read or understood the e-mail?

19            A       Well, it would be relevant if it were  
20      false --

21            Q       How is that?

22            A       -- and then -- and then he is  
23      explaining that he has a plan.

24                    In other words, he has a way of solving  
25      that problem if she stays with him in that office.

1           Q       And what do you mean by saying J.P. was  
2 saying "if you do what I want"?

3           A       I deal in pay-for-stay, so I want you  
4 to stay, and if you stay, you will get the  
5 GS level and pay that you want.

6           Q       So if -- if Caryn did what J.P. wanted,  
7 then he would -- well, he would pay her more  
8 money?

9           A       That's the clear implication of this,  
10 yes.

11          Q       I deal in pay-for-stay, pay-for-stay?

12          A       (No verbal response.)

13          Q       And did you interpret this e-mail to be  
14 a quid pro quo e-mail?

15          A       It could be construed as that.

16                 Typically, "quid pro quo" refers to sex  
17 for a workplace benefit, but since physical  
18 interactions were not part of this case, I would  
19 take it that the quid pro quo was having Caryn  
20 remain under his supervision and control for a  
21 workplace benefit. So, yes, I think that's a fair  
22 reading of quid pro quo.

23          Q       Submit to his control for a workplace  
24 benefit?

25          A       Yes.

1           Q       And if she had submitted to his control  
2       for a workplace benefit for more -- for more  
3       salary, would you be concerned that she would be  
4       submitting to sexual advances at some further  
5       date?

6           A       That would -- that would definitely be  
7       a concern.

8           Q       Would it be a reasonable concern for  
9       Caryn to have after receiving that e-mail, in your  
10      view?

11          A       I believe so.

12          Q       Do you -- given the subject line of  
13       Caryn's e-mail, do you think that she interpreted  
14       J.P.'s communications as a sexual quid pro quo  
15       e-mail?

16          A       I believe that would have been a  
17       reasonable interpretation. I can't speak to  
18       exactly what was on her mind at the time.

19          Q       Understood.

20                   Do you recall the text messages that  
21       were shown as Government Exhibit 5 today?

22                   We can put up the exhibit, if you'd  
23       like to see them again.

24          A       If you just refer to the language, I  
25       bet I can recall it.

1           Q       Yeah, it was the text where she was  
2 referred to as "tough girl" by J.P. Davis?

3           A       Oh, yes, right, the ride home in the  
4 rain.

5           Q       Yeah.

6                   What, if anything, did you make of  
7 language like "tough girl"?

8           A       I think it was not the kind of language  
9 one would expect from a senior official to a more  
10 junior lawyer in the office -- in other words,  
11 overly familiar -- and I also think that I'll  
12 restate what I originally said, which was she had  
13 concerns about being alone with him in the office  
14 or in the car, and it was clear that he was trying  
15 to have her take a ride home with him alone.

16          Q       Those messages were after the e-mail,  
17 is that right, or -- about the raise?

18          A       Oh, I don't know. I'd have to check.

19          Q       Okay. We could --

20          A       Let's see. 5/18, and then I don't  
21 recall what the other one was.

22                   MR. GERSEN: Could we put up Government  
23 Exhibit --

24                   Sorry, I'm just looking for it now.

25                   THE WITNESS: Sure.

1 MR. GERSEN: -- Government Exhibit 5?

2 AV TECHNICIAN: (Technician complies.)

3 THE WITNESS: Oh, yes. The -- the  
4 tough girl, last chance for a ride text is on  
5 June 21st, so that would be after the -- the  
6 compensation e-mail.

7 BY MR. GERSEN:

8 Q And you mentioned that it would be  
9 inappropriate or concerning if it was from a  
10 senior supervisor to a junior employee.

11 Does the fact that it was a male  
12 supervisor to a female supervisee affect your  
13 view?

14 A Yes. That would be -- and was -- even  
15 more of a concern, especially when he had openly  
16 expressed his interest in her by saying she was  
17 hot to a number of other employees.

18 Q In your experience, do a lot of male  
19 supervisors call female supervisees "girl"?

20 A Also inappropriate.

21 Q This e-mail was sent, it looks like, at  
22 6:44 p.m.?

23 A Yes.

24 Q In your experience, when do federal  
25 offices close?

1           A       Well, I don't believe I ever worked  
2 past 7:00 p.m., but I do recall Caryn specifically  
3 saying on this occasion the workplace was  
4 virtually empty, and that made her additionally  
5 concerned about being alone with him in the  
6 building and, in addition, being alone in a car  
7 with him.

8           Q       And does this text exchange make you  
9 more or less concerned that the prior quid pro quo  
10 e-mail might have been a precursor to further  
11 sexual advances?

12          A       This text made me more concerned.

13          Q       Thank you.

14                   You testified earlier that at some  
15 point, Caryn got uncomfortable with the  
16 communications with J.P. at work?

17          A       Yes.

18          Q       In your experience, can people have  
19 interpersonal relationships that are positive that  
20 later change after a boundary is crossed?

21          A       Oh, absolutely.

22          Q       And can warm, interpersonal  
23 relationships that are positive sometimes be seen  
24 or understood as grooming in hindsight for further  
25 sexual advances?

1           A       Absolutely.

2           Q       Is this common in sexual harassment  
3 cases?

4           A       In my experience, from what I have read  
5 in published cases as well as seen in my workplace  
6 interactions as a civil rights lawyer or defense  
7 attorney, yes.

8           Q       Thank you.

9                   Can you help me understand a little bit  
10 about the relationship between your office and the  
11 AO and OGC?

12          A       My office, fair employment practices  
13 office?

14          Q       Yes, ma'am.

15          A       And OGC, yes.

16                   As I mentioned before, within the AO,  
17 they -- the AO and its managers are represented by  
18 the Office of General Counsel with the specific  
19 goal of avoiding future liability.

20                   My office was, and my staff attorneys  
21 were, in the position of giving -- among other  
22 duties, giving neutral advice to both managers and  
23 employees about workplace discrimination,  
24 harassment, and the other civil rights laws.

25          Q       And who's entitled to ask for advice

1 from OGC?

2 MR. GERSEN: And, I'm sorry, you can  
3 take the exhibit down. Thank you.

4 AV TECHNICIAN: (Technician complies.)

5 THE WITNESS: OGC is likely to be  
6 contacted by agency managers and other officials.

7 I -- I would say they probably have  
8 been approached from time to time by employees,  
9 but that's not the ordinary case.

10 BY MR. GERSEN:

11 Q Thank you. These are really actually  
12 clarifying questions.

13 So OGC, in general, although they might  
14 be approached by an employee, that would be  
15 unusual?

16 A Right. And we have -- we, as a civil  
17 rights office, have much more, to my knowledge,  
18 contact with employees.

19 Q Much more contact with employees?

20 A Much more, yes.

21 Q Okay. Understood.

22 And OGC does, though, sometimes give  
23 advice -- legal advice to super- -- like  
24 supervisors and unit heads?

25 A Oh, absolutely.



1           Q       And their concern, I think you said  
2 earlier, was primarily defensive or protective?

3           A       Yes.

4           Q       In the sense that they would be  
5 guarding the -- either the agency's or the  
6 judiciary's interest?

7           A       Yes.

8           Q       Understanding, in some ways, the  
9 employee's claims as risk to the institution; is  
10 that fair?

11          A       Yes.

12          Q       And that was not true of your office,  
13 correct?

14          A       That was not true of my office, no.

15          Q       So who -- whose office is in charge of  
16 giving guidance to judicial branch employees who  
17 have experienced sexual harassment or sex  
18 discrimination?

19                   Is that your office, or is it a  
20 different office?

21          A       It's primarily my office.

22                   There is a new position that was  
23 created that reported directly to the AO director  
24 to take claims and concerns from employees who  
25 were experiencing discrimination and harassment.

1                   So that occurred probably, I think, in  
2                   2019 before I retired, so there were actually two  
3                   places that an employee could go. One was this --  
4                   and I don't even remember what the title was, but  
5                   the individual provided guidance to employees and  
6                   discussed concerns with them, and that person  
7                   reported directly to Director Duff.

8                   Q           So --

9                   A           Two possible avenues for employees to  
10                  use, in addition to their own EDR programs in the  
11                  courts.

12                  Q           And the -- the second office you  
13                  mentioned did not exist at the time of Caryn's  
14                  complaint or allegations, or it did?

15                  A           No, I think it did, and I just can't  
16                  remember if Caryn actually made contact with that  
17                  office, and she may not have told me, so I -- I  
18                  just don't know, but it was an available resource  
19                  as well.

20                  Q           Understood.

21                               What is the -- is that the judicial  
22                  integrity office?

23                  A           Yes, it is.

24                  Q           So there's fair employment, and then  
25                  judicial integrity --

1           A       Yes.

2           Q       -- correct?

3           A       Yes.

4           Q       So employees could go to either  
5 office --

6           A       Yes.

7           Q       -- if they wanted to?

8           A       And sometimes both.

9           Q       And sometimes both.

10                   And forgive me for going over it once  
11 more. I'm just trying to understand the lay of  
12 the land.

13                   That office had different authority  
14 or -- a different authority or role than your  
15 office?

16           A       Yes, because we actually processed  
17 discrimination complaints, and that office, I  
18 believe, was 100 percent advisory.

19                   So employees could report concerns to  
20 the Office of Judicial Integrity, and the head of  
21 that office would give -- give advice to the  
22 employee and then to the extent possible would  
23 bring in the managers to -- to prevent  
24 discrimination and harassment.

25           Q       And I think you said --

1           A       But they had -- they had no complaint  
2       processing authority the way my office did.

3           Q       And I thought you said earlier that  
4       that second office, the judicial integrity office,  
5       was created in 2019?

6           A       Yes, on or about that time. It was  
7       created as a result of Congressional inquiries to  
8       the harassment -- to harassment and discrimination  
9       in the judicial branch, and so I believe as a  
10      means of providing employees more options, the  
11      AO management decided that that would be a good  
12      move.

13          Q       Are you -- you're familiar with those  
14      Congressional investigations?

15          A       Yes.

16          Q       And what was their concern?

17          A       Well, I mean, again, at the time, this  
18      issue of sexual discrimination and harassment was  
19      all over the news. It was -- it was a concern for  
20      the judiciary, the Congress, the executive  
21      branches, and we had Congressional inquiries about  
22      how our branch of government dealt with these  
23      allegations.

24                   And so Director Duff testified before  
25      Congress on that issue, and, you know, it was --

1     it was on everyone's minds, even more than -- in  
2     my experience in 35 years of legal practice, even  
3     more than previously.

4           Q       And is it fair to say that  
5     Director Duff was concerned that the existing ways  
6     of addressing and responding to complaints of  
7     sexual harassment were inadequate at the time?

8           A       No. I think that's going too far. I  
9     think Director Duff -- and I have the utmost  
10    respect for him and Lee Ann Bennett. I believe  
11    they were always people who always wanted to do  
12    the right thing.

13                  Regardless of, you know, what their  
14    lawyers told them or otherwise, they wanted to do  
15    the right thing, and this office was a means of  
16    achieving that.

17          Q       And that office, the new office, the  
18    judicial integrity office, trying to do the right  
19    thing and give employees a better means of  
20    preventing and responding to sexual harassment in  
21    the judiciary?

22          A       Yes.

23          Q       And how did it do that, or how is it --

24          A       Well, I believe -- and, again, this  
25    office was only in existence for about four to

1 five months before I retired, but the head of that  
2 office would discuss allegations that she found  
3 concerning with the director, because she reported  
4 directly to him.

5 Director Duff was my second-level  
6 supervisor, so this office, I believe almost  
7 exclusively informally, dealt with those  
8 allegations, and if she gathered information --  
9 that office had gathered information and would  
10 look at repeating claims of discrimination or  
11 harassment in a particular office, and if patterns  
12 made themselves clear, she would inform the  
13 director of those concerns.

14 Q Were you aware at the time or  
15 subsequently of any patterns of sexual harassment  
16 or discrimination in this federal defender's  
17 office?

18 A Well, I knew through Caryn that there  
19 were a number of complaints that were filed,  
20 including in the case that we looked at earlier.

21 So that -- that -- that is the only  
22 pattern I knew of, that there were other  
23 complaints of, I would say, discrimination in that  
24 office.

25 Q Thank you.

1                   Was there at the time, then, any other  
2 office that someone who experienced sexual  
3 harassment or sex discrimination could report or  
4 get advice from?

5           A       No, I don't believe so. I think the --  
6 I think that -- in terms of reporting and --  
7 and -- and having the -- having the AO address  
8 what is going on either at the AO or in the  
9 courts, I believe my office and the Office of  
10 Judicial Integrity were the exclusive means of  
11 raising those issues.

12          Q       And you described, again, your office  
13 as a neutral --

14          A       Yes.

15          Q       -- and I think you explained that as  
16 not being defensive protecting the institution or  
17 acting on behalf of the complainant; is that fair?

18          A       Yes, yes.

19          Q       And you described OGC as being  
20 defensive in posture --

21          A       Yes.

22                   (The Reporter clarified the record.)

23 BY MR. GERSEN:

24          Q       You described OGC as defensive in  
25 posture?

1           A       Yes.

2           Q       OGC as defensive in posture protecting  
3 the interest of the judicial branch or the  
4 supervisors or unit managers; is that fair?

5           A       Yes.

6           Q       Okay. Was there any party or  
7 institution within the judiciary that was  
8 dedicated to protecting the interest of the  
9 employees in these matters?

10          A       I would say that the EDR process was  
11 designed to protect judicial employees, and then  
12 again, my office and the Office of Judicial  
13 Integrity were there to prevent -- I mean, to --  
14 to present claims of discrimination and harassment  
15 so they could be dealt with at the  
16 soon-as-possible point.

17                   But certainly the judiciary's  
18 EDR process was designed to do the -- the same,  
19 and that, I would say, is primarily an  
20 employee-based process.

21          Q       And a process designed to protect the  
22 interest of the employees?

23          A       Yes.

24          Q       Who have experienced sex discrimination  
25 or harassment?



1           A       Yes.

2           Q       Thank you.

3                   So in your experience with handling sex  
4 discrimination complaints, is it typical for OGC  
5 to give legal advice to the accused party or  
6 person?

7           A       Yes.

8           Q       And why is that?

9           A       Well, because when someone is accused  
10 of discrimination or harassment, OGC's role is to  
11 advise the manager on what their legal  
12 requirements are and hopefully to change the  
13 behavior, and, again, in -- in protection of the  
14 integrity of the judiciary and to eliminate or  
15 prevent any future discrimination or harassment.

16          Q       And in your experience, what did OGC do  
17 when there was a conflict between a legitimate  
18 claim of sex discrimination or harassment and the  
19 interest of the accused or the judiciary?

20          A       You mean when -- when those interests  
21 diverge?

22          Q       Yes.

23                   MS. McMAHON: I'm going to --

24                   THE WITNESS: Their role --

25                   MS. McMAHON: I'm going to object on

1 attorney-client privilege grounds here and direct  
2 the witness not to answer about any specific  
3 advice that OGC would have given to one party or  
4 another.

5 BY MR. GERSEN:

6 Q Were you or your office clients of OGC?

7 A No, although -- although -- I'll expand  
8 on that a little bit.

9 No, we were not, but if I had a  
10 question as a senior manager about how to proceed  
11 in my own managerial decisions, I often talked to  
12 OGC about it, because I was, in addition, a  
13 manager of a number of attorneys, a number of  
14 interns, and, as I said, I had very good relations  
15 with the general counsel and the deputy general  
16 counsel, and we had discussions regularly about  
17 how to proceed in a given matter.

18 Q Without disclosing any specific advice,  
19 in your experience, how did OGC resolve conflicts  
20 between the different parties' interests in  
21 complaints of sex discrimination or harassment?

22 A Sheryl Walter and Bill Meyers, in my  
23 view, were some of the most ethical lawyers I have  
24 worked with in the past, and that's part of the  
25 reason that we worked so well together and I think

1 were able to stop discrimination and harassment in  
2 many, many cases, because of that compatible  
3 relationship and our understanding of the law.

4 Q It sounds like you have a lot of  
5 respect for OGC in general?

6 A In general, I do.

7 Q And a lot of respect for Jim Duff as  
8 well?

9 A I do.

10 Q And you worked well in your office?

11 A Yes.

12 Q You were on good terms with the people  
13 in your office?

14 A Yes, I was on excellent terms with my  
15 two supervisors, Jim Duff and Lee Ann Bennett.

16 Q And you retired on good terms, I take  
17 it?

18 A I did. I -- I have nothing but fond  
19 memories.

20 You know, obviously, there were cases  
21 that I felt like I wish I could have done more at  
22 an early point, and the Plaintiff's case is one of  
23 those. I felt like there was a real means to make  
24 the workplace situation better for everyone and  
25 not to have the Plaintiff's career sabotaged as

1 ultimately I believe it was.

2 She's no longer employed by the  
3 judiciary, but it -- it is a case I regret I could  
4 not have done more about.

5 Q What do you wish you could have done  
6 more or done earlier?

7 A I wish that we could have settled the  
8 matter ear- -- I mean, every civil rights  
9 commentator suggests and recommends early dispute  
10 resolution. It's better for everyone. And I  
11 think this was the perfect case of we had -- we  
12 had an opportunity, but somehow it -- it was  
13 sidetracked.

14 Q And do you have a sense or a theory of  
15 how it got sidetracked?

16 A Well, that e-mail from Mr. Ishida is  
17 some evidence of that, yes.

18 Q The e-mail from Mr. Ishida is some  
19 evidence that that process got sidetracked by?

20 A By him.

21 Q By Mr. Ishida and Mr. Martinez?

22 A Yes.

23 Q I want to go back, if I could, to your  
24 initial conversations with Caryn for a few  
25 minutes.

1           A       Sure.

2           Q       I think you've talked about them quite  
3 extensively, so I won't belabor the point, but can  
4 you give me a sense of your impression of Caryn in  
5 your first few conversations?

6           A       Oh, I thought she was honest and  
7 articulate, and the reason I say honest was she  
8 said things about herself that were both positive  
9 and negative.

10                   She was not, as often when you distrust  
11 what somebody is telling you, you know, giving me  
12 a description of the workplace as totally  
13 favorable to her and she could do no wrong, and  
14 she gave me a very, I thought, reasoned and fair  
15 description of what was going on, and, again, I  
16 was aware of her history as a judiciary employee,  
17 and she was an impressive person, an impressive  
18 employee.

19           Q       What negative things did she say about  
20 herself? You mentioned some.

21           A       I can't remember exactly, but I do  
22 remember thinking here is somebody who is  
23 accurately reporting to me and is not giving me  
24 all negative statements about her supervisors and  
25 all positive things about herself.

1 Q So in your --

2 A So that was my impression.

3 Q My apologies. Thank you.

4 So in your experience both in the  
5 executive branch and the judicial branch, you, I  
6 take it, heard a lot of these complaints of sexual  
7 harassment or sex discrimination?

8 A Thousands.

9 Q Thousands?

10 And do you always believe the people  
11 who come to you with these complaints?

12 A No, I do not. Just the opposite.

13 Q And say a little bit more.

14 A Well, there are people who make  
15 complaints that are inherently unreliable, and --  
16 and I have seen many of them.

17 When I was a judicial clerk and was  
18 adjudicating -- working on adjudicating the cases,  
19 I saw plaintiffs who were unreliable and I  
20 believed were creating false claims.

21 I mentioned that in a deposition I  
22 testified in at EPA, there was an employee who was  
23 making a false claim about a sexual assault by one  
24 of the EPA managers, and I testified on behalf of  
25 the agency.

1                   So when you -- when you -- when you  
2                   look at a lot of these cases over 35 years, I  
3                   would say the vast majority of the claims are not  
4                   true. So in -- in the few times when I worked at  
5                   the AO when I believed -- strongly believed what a  
6                   plaintiff was saying, those are the cases I really  
7                   tried to intervene and assist with what the law  
8                   tells us to do, which is to remedy and prevent  
9                   future harassment and discrimination.

10                Q           And so having seen thousands of these  
11                cases, you're actually more likely to disbelieve  
12                the complaints than believe them?

13                A           Yes, just based on numbers.

14                Q           And did you believe Caryn's allegations  
15                about J.P. Davis?

16                A           I did. I did.

17                Q           And did you believe her allegations  
18                about Tony Martinez?

19                A           I did.

20                Q           Do you believe she was telling you the  
21                truth?

22                A           I do.

23                Q           Do you think her concerns about her  
24                workplace were reasonable?

25                A           I do.

1           Q       And did you feel in those conversations  
2     like she was sincere?

3           A       Yes.

4           Q       Did you suspect that she was being  
5     manipulative or deceptive?

6           A       No, I did not.

7           Q       Did you think Caryn was telling a false  
8     story to try to get a transfer to another work  
9     location?

10          A       No, I did not.

11          Q       Did you think she might be fabricating  
12     or exaggerating things that had happened so she  
13     could get to work exclusively in appeals?

14          A       No, I did not.

15          Q       Thank you.

16                 MR. GERSEN: Can we put up Government  
17     Exhibit 1, please, page 1?

18                 AV TECHNICIAN: (Technician complies.)

19                 MR. GERSEN: Thank you.

20     BY MR. GERSEN:

21          Q       I think you said that Caryn told you  
22     about ways that J.P. was asserting control; is  
23     that right?

24          A       Yes.

25          Q       Do you remember her telling you that



1 J.P. became emotional when she told him that  
2 eventually she wanted to work out of the Asheville  
3 office?

4 A Emotional in -- in what way? Anger?  
5 Surprise? Tearful? I need -- I need more  
6 clarification.

7 Q Anger.

8 A Yes, I do remember that.

9 Q Was -- did she describe him as tearful?

10 A No.

11 Q She described him as angry when she  
12 told him that she eventually wanted to move to the  
13 Asheville office to work somewhere away from  
14 there?

15 A Yes. And I recall a couple of examples  
16 when he became very angry at her and sort of  
17 lashed out at her, and, again, I -- I took that as  
18 some evidence of his desire to control her and the  
19 situation.

20 Q And would it have made you nervous at  
21 all about Asheville as a solution to the control?

22 In other words, would simply moving  
23 offices eliminate the problem if J.P. was still in  
24 control and overseeing her?

25 A No, that would not have solved the

1 problem. In my mind, that employee/employer or  
2 manager relationship needed to be broken, and she  
3 needed to report to someone else.

4 Q Understood.

5 And just to be clear, the Government's  
6 asked you to speculate a lot, but these aren't  
7 your notes, correct?

8 A The notes in front of me?

9 Q Correct.

10 A They are not. They are -- from what I  
11 understand, they are Caryn's notes.

12 Q So you don't actually know what Caryn  
13 meant, of course?

14 A I don't. I don't. I can only make a  
15 reasoned determination of what she meant.

16 But, also, part of what I see refreshes  
17 my memory about that initial conversation.

18 Q Can you say a little more about that?

19 A Well, I remember -- I mean, I remember  
20 telling her I was the manager of the civil rights  
21 office for the federal courts and for  
22 AO employees.

23 I remember telling her that I had been  
24 a law clerk and that I had a number of different  
25 positions over the years in civil rights and

1 EEO compliance.

2 And I remember telling her, as I often  
3 did with employees, that my office was neutral.  
4 It was not my job to represent either management  
5 or the complainant -- complainant or to give legal  
6 advice to managers.

7 Q Understood.

8 Did Caryn contemplate other solutions  
9 besides moving locations?

10 A I honestly can't remember that.

11 I know that she was very uncomfortable  
12 with being in the physical -- in the physical  
13 office with Mr. Davis, and so I -- I believe that  
14 any acceptable solution so that her job duties  
15 remained the same or equivalent and yet she was  
16 not subject to that supervision would have been  
17 appropriate, and that's what we looked for.

18 Q Under- -- understood.

19 MR. GERSEN: Could we see Government  
20 Exhibit 3 again, please, page 3?

21 AV TECHNICIAN: (Technician complies.)

22 BY MR. GERSEN:

23 Q Does this refresh your memory at all  
24 about other alternatives that Caryn considered?

25 A Yes.

1 Q How so?

2 A Well, she says here that I was going to  
3 talk to my boss and look at solutions such as a  
4 lateral transfer as a research and writing  
5 attorney or the appellate AFD offer, and...

6 Q And the line, the lateral transfer as a  
7 research and writing position, would that be an  
8 advanced -- a career-advancing position, or the  
9 same?

10 A I think that would be the same. That  
11 was what the office that -- or the position that  
12 she held at the time.

13 MR. GERSEN: Okay. You can take down  
14 the exhibit. Thank you.

15 AV TECHNICIAN: (Technician complies.)

16 BY MR. GERSEN:

17 Q Did Caryn ask you to talk to other  
18 people in the AO on her behalf?

19 A She never suggested, I do not believe,  
20 that I talk to anyone at the AO, other than she  
21 knew that I had talked to Laura Minor, and I  
22 assume asked Laura Minor to contact me.

23 My conversations with AO employees were  
24 entirely my decisions, but who I thought could  
25 help in this situation or had responsibilities in

1 this situation.

2 Q And so you did that at your own  
3 directive or initiative; is that correct?

4 A Yes.

5 Q Did you talk to Cait Clarke about her?

6 A I did.

7 Q And you said, I think, that Cait Clarke  
8 gave you information about the office and some of  
9 the parties; is that correct?

10 A She did. She had -- she had a lot of  
11 background with that particular office and the  
12 parties involved, and she told me what she knew.

13 Q And what was that?

14 A Well, all I can remember is generally  
15 that there had been problems in that office  
16 previously, and she had described to me some of  
17 the problems.

18 I can't even tell you exactly what they  
19 were, but they -- they involved her in her  
20 position as one of the senior officials at the AO,  
21 and so I think she may have even warned me to be  
22 careful about the situation and to treat it  
23 delicately.

24 Q And how did you interpret what she  
25 meant by be careful with the situation?

1           A       I think that Cait Clarke believed that  
2 she had been retaliated against or had some  
3 negative comments made to her bosses by that  
4 office, and I think she was warning me just to be  
5 careful.

6                   And now that I see the e-mail that I  
7 saw for the first time today from Mr. Ishida, I  
8 understand why she had concerns.

9           Q       Cait Clarke believed that she had been  
10 retaliated against by the Fourth Circuit?

11          A       That -- that -- well, that -- that --  
12 that -- I'll say that generally, yes, that she had  
13 been retaliated against by various people in the  
14 Fourth Circuit based on her handling of  
15 situations, and I do not remember the details.

16          Q       And by handle it delicately, do you  
17 have a sense of what she meant?

18          A       I think she meant really talk to only  
19 the people who can do something about it.  
20 Don't -- don't -- don't say more than you  
21 absolutely need to say, and just watch your back.

22          Q       Watch your back?

23          A       (No verbal response.)

24          Q       To your knowledge, did Cait Clarke get  
25 information about the Western District of

1 North Carolina Public -- federal public defender's  
2 office from Caryn, or was it her -- Cait's prior  
3 knowledge?

4 A No. This was -- I mean, in part, it  
5 must have been from Caryn -- well, I don't know.  
6 Caryn never -- I don't think Caryn ever talked to  
7 Cait directly.

8 But, no, this was primarily Cait's own  
9 interactions professionally over the years with  
10 that office.

11 Q And what about Lee Ann Bennett?

12 A Lee Ann Bennett, before she was the  
13 deputy director, worked in one of the southern  
14 EDR offices or one of the southern -- she was a  
15 circuit executive. She was a circuit -- a senior  
16 person in one of the southern courts, and so she  
17 knew the parties that were involved too because  
18 the [indecipherable] of the courts tend to know  
19 each other, and -- and staff tends to know each  
20 other.

21 Q And did she give you any warning about  
22 the parties?

23 A She did not.

24 Q Okay. I think counsel asked you about  
25 how you knew about the various allegations, these

1       allegations, and you said through Caryn and Cait  
2       and other sources.

3                     Is that fair or correct?

4             A       Yes, yes.

5             Q       I don't want to misstate it.

6             A       No, that's correct.

7             Q       And did you ever independently  
8       investigate those claims or claims like these?

9             A       No. That would not have --

10            Q       Was that your role?

11            A       That would not have been my role.

12            Q       In the summer of 2018 while this was  
13       unfolding, did you advise Caryn to try to resolve  
14       her claims informally?

15            A       Yes, I believe I did.

16            Q       And why did you advise that?

17            A       Well, because the principle that -- you  
18       know, early resolution of complaints is the  
19       preferred method so that things don't get worse  
20       and so the -- and so it can be a resolution that  
21       is better for everyone, including the employee.

22            Q       Better for everyone than?

23            A       Than continuing to live and work in an  
24       unhappy work environment and possibly suffering  
25       retaliation to one's career.



1           Q       So you would be worried, given your  
2       experience, that there might be retaliation and  
3       harm to one's career for pursuing --

4           A       No, I --

5                   (The Reporter clarified the record.)

6       BY MR. GERSEN:

7           Q       -- for pursuing an employment  
8       discrimination claim within the judiciary?

9           A       Yes, that -- in every workplace I've  
10      advised and/or worked in, that is a reality, and I  
11      think even at the EEOC when -- you know, there  
12      were instances where managers retaliated against  
13      people who brought complaints. That has -- that  
14      has been a fact of life in the executive branch,  
15      in the judiciary, and in any other situations that  
16      I've become familiar with by reading.

17                  Retaliation is a fact of life, and I  
18      think that a person contemplating a formal process  
19      has to be aware of that.

20          Q       Are you aware that Caryn alleged that  
21      she was retaliated against by her supervisor, by  
22      Tony Martinez?

23          A       I would not be surprised to hear that.

24          Q       You would -- would you not be surprised  
25      if, in fact, there were retaliation?

1           A       I would not be surprised.

2           Q       You testified repeatedly that employees  
3 regularly contact your office --

4           A       Yes.

5           Q       -- with concerns about sexual  
6 harassment; is that correct?

7           A       Yes.

8           Q       Do they sometimes, those employees,  
9 contact your office about harassment or  
10 discrimination before bringing their concerns to a  
11 supervisor in their own office?

12          A       Yes.

13          Q       And why might they do that, or what are  
14 some reasons that employees contact your office  
15 rather than going to their immediate supervisor or  
16 unit executive?

17          A       Well, because they want -- they want  
18 somebody to hear their concerns. They want to  
19 know what the law says about their concerns.  
20 They -- they get comfort by talking to somebody  
21 who is experienced in dealing with complaints of  
22 discrimination and harassment.

23          Q       And is one reason they might contact  
24 your office before their immediate supervisor a  
25 worry or concern about retaliation?

1           A       Yeah, I would think so.

2           Q       And what might that retaliation look  
3 like? What are some forms of retaliation that  
4 you've seen?

5           A       Oh, my goodness. I think I've seen  
6 everything, and this is, again, not -- not the  
7 judiciary in particular, but I have seen people  
8 fired, people's workplace duties diminished,  
9 people -- employees ostracized.

10                   Just every possible negative that you  
11 could imagine happening in the workplace, I have  
12 seen examples of that.

13          Q       So diminished job responsibilities, for  
14 example?

15          A       Yes.

16          Q       And negative comments about them  
17 formally or informally?

18          A       Yes. All of a sudden, stellar  
19 performance reviews turn into either mediocre or  
20 actually negative reviews.

21          Q       Could retaliation or a form of  
22 retaliation be negative comments about reaching  
23 out for help to an office like yours?

24          A       I would think so, yes.

25          Q       What about not allowing an employee to

1 take notes during a meeting, at a meeting about  
2 harassment, for example?

3 A Well, if I were told about that, I  
4 would tell a manager that the employee has every  
5 right to takes notes in a meeting about harassment  
6 or discrimination.

7 Q So in your view, it would actually be a  
8 deprivation of that employee's rights?

9 A I think that is true.

10 Q Thank you.

11 You mentioned that in talking to -- to  
12 OGC or the General Counsel about the case that  
13 they had concerns as well; is that correct?

14 A Yes. I recall very early on having  
15 conversations with OGC, and, yes, they -- they had  
16 concerns.

17 Q And were you at all worried about  
18 bringing the case to OGC given that they are  
19 defensive, as you put it?

20 A Well, I didn't bring it to OGC  
21 specifically. I believe that the deputy director  
22 invited me to meetings with OGC to discuss this  
23 case, and that was a normal way to handle  
24 discrimination and harassment complaints.

25 Q And who was the deputy director again?

1           A       Lee Ann Bennett.

2           Q       Lee Ann Bennett.

3                    So Lee Ann Bennett invited you to a  
4 meeting to discuss the Caryn Devins matter?

5           A       Yes.

6           Q       Yes? Okay.

7                    And what were the concerns that they  
8 raised?

9           A       Well, again, any -- any allegation of  
10 sexual harassment is of concern, and certainly  
11 someone who had Caryn's background and had been,  
12 for example, a U.S. Supreme Court Fellow, a law  
13 clerk to a U.S. District Judge and a Circuit Court  
14 of Appeals Judge, and was generally very highly  
15 thought of, that would be of concern to, I think,  
16 senior leadership at the AO, and in this case, it  
17 was.

18          Q       And -- okay. And how would you  
19 describe their -- let's just say, why were they  
20 concerned?

21          A       Well, I think they were concerned that  
22 eventually this might lead to a public disclosure  
23 or litigation or a judgment against the judiciary.

24          Q       They were worried about public  
25 disclosure, litigation, and judgment against the

1       judiciary?

2           A       Yes. And also, again, Lee Ann Bennett  
3       and the director, as I've testified, were  
4       individuals who were always concerned about doing  
5       the right thing, and so that played into their  
6       concerns as well.

7           Q       And by "judgment against the  
8       judiciary," do you mean a judgment at the end  
9       of -- do you mean a judgment against J.P. or Tony  
10      Martinez?

11          A       No. I mean against that office or, you  
12      know, to the extent the AO was involved, against  
13      the AO.

14          Q       And by "that office," you mean the  
15      federal public defender?

16          A       Yes.

17          Q       And -- or the AO.

18                   And by judgment, did you mean public  
19      condemnation, or an award at the end of  
20      litigation?

21          A       Either.

22          Q       Who else do you remember was at the  
23      meeting that Lee Ann invited you to attend?

24          A       I think it was OGC, the deputy  
25      director, and me. I think that was -- that was

1 it.

2 Q And could you give me their names just  
3 for the record?

4 A Sure. Sheryl Walter, the former  
5 general counsel of the AO; and me; and Lee Ann  
6 Bennett, the deputy director.

7 Q Thank you.

8 And you've talked about that meeting  
9 and their concerns in somewhat general terms.

10 Do you recall the deputy director's  
11 response or what they wanted to do, what they felt  
12 should be done?

13 A Well, the deputy director definitely  
14 supported my involvement in trying to settle the  
15 matter informally, and she was prepared to support  
16 that as well, and I believe her other concern was  
17 protection of the employee so that there was no  
18 future retaliation or discrimination or  
19 harassment.

20 Q And was there disagreement about how to  
21 proceed?

22 MS. McMAHON: And I'll just object  
23 quickly.

24 To the extent that you would be  
25 speaking about any sort of advice that came from

1 OGC to either you or Lee Ann, please do not  
2 answer.

3 THE WITNESS: I understand.

4 BY MR. GERSEN:

5 Q I'll just ask one more time.

6 Were you a client of OGC?

7 A No, although as I -- as I said, there  
8 were times in my role as a manager that I would  
9 consult with OGC, because it was their job to  
10 defend me in my capacity making employment  
11 decisions as a manager.

12 Q In this meeting or this matter, were  
13 you a client of OGC?

14 A No, I don't believe so. There's no way  
15 to reasonably suggest that.

16 MS. McMAHON: To be -- to be clear,  
17 Lee Ann Bennett was also in the meeting, who is a  
18 client of OGC.

19 MR. GERSEN: Understood.

20 THE WITNESS: Correct.

21 MR. GERSEN: A third-party presence I  
22 think would probably breach the privilege, no?

23 MS. McMAHON: We would have to consult  
24 with the individuals involved to be specific about  
25 that, but I -- the witness -- to be safe, maybe



1 the witness doesn't answer about specific advice  
2 that's given.

3 Does that work?

4 MR. GERSEN: Yeah, why don't we note  
5 that, and we can come back to the issue if we need  
6 to at a later -- at another time.

7 BY MR. GERSEN:

8 Q So can you -- to the extent that you  
9 could answer the question without revealing  
10 specific advice that was -- specific legal advice  
11 that was given?

12 A And what was the question again?

13 Q I think the question was: Was there  
14 disagreement about how to proceed?

15 A In -- in my initial meetings, no, there  
16 was not disagreement.

17 Q And what was the decision about how to  
18 proceed from those initial meetings?

19 A Well, that -- that OGC would contact  
20 the managers and provide counsel to them, that I  
21 would continue to attempt to informally resolve  
22 the matter and to give Caryn advice on the  
23 processes she had at her disposal -- disposal, and  
24 that we would continue to discuss.

25 Q And was there anything especially

1 unusual about that decision to proceed in that  
2 way?

3 A No. It happened more times than I can  
4 count.

5 Q It was very much the norm or a normal  
6 way to proceed in a case like this?

7 A Exactly. And when I say countless  
8 times, the managers were different. I mean, it  
9 wasn't always the deputy director. It might have  
10 been an office head or another manager, but that  
11 was perfectly usual proceedings where OGC, my  
12 office, and a manager of an office would sit down  
13 and discuss next steps.

14 Q And would it be a breach of your  
15 obligation or responsibilities if you hadn't done  
16 so, do you think?

17 A I think it would have been.

18 Q Thank you.

19 You mentioned that you had a very  
20 positive relationship with Cait Clarke, I think,  
21 professionally?

22 A Yes.

23 Q And you had confidence that she would  
24 do the right thing?

25 A Yes.

1           Q       And what did you mean by "do the right  
2       thing"?

3           A       Well, she was about to contact the  
4       managers that were involved, and I had every  
5       confidence that she would communicate to them that  
6       they needed to be aware of the laws that protect  
7       employees and to do the appropriate thing and not  
8       to retaliate. I assume that's part of the  
9       discussion she had with them.

10          Q       So Caryn's case wasn't treated  
11       unusually or specially or differently?

12          A       No.

13          Q       And after -- after this meeting, can  
14       you describe what you or your office did in the  
15       next -- next steps?

16          A       Right. Well, it wasn't one meeting.  
17       It was probably multiple meetings with OGC, the  
18       deputy director, and me, and I continued to try to  
19       resolve the case informally, and I believe that  
20       Amaal Scroggins was also advising the EDR program  
21       on how to proceed in terms of doing -- doing --  
22       giving the employee access to the process that she  
23       was entitled to.

24          Q       And you have, I take it, quite a lot of  
25       experience with the EDR process?

1           A       Well, yes. I mean, I -- that was  
2           probably something I worked on every day of the  
3           five years I was at the AO. We just -- we were  
4           there as a resource for judiciary employees,  
5           managers, and those who were involved in the  
6           EDR process.

7           Q       Great. Thank you.

8                   MR. GERSEN: I think it's a good time  
9           for us to take a quick break.

10                  THE WITNESS: Okay.

11                  (A recess was taken.)

12   BY MR. GERSEN:

13           Q       Okay. When Caryn first reached out to  
14           you, she had not started an EDR process; is that  
15           correct?

16           A       Yes, that's my recollection.

17           Q       She had started that process in  
18           approximately September; is that your  
19           recollection?

20           A       Somewhere around that time, yes.

21           Q       And counsel asked you about an  
22           interview Caryn had with Heather Beam at the end  
23           of August earlier.

24                   Do you recall that?

25           A       Yes. I do remember Caryn telling me

1 about it and Heather reporting it, yes.

2 Q And when Caryn reached out to you -- do  
3 you know what that interview was about?

4 A You mean with Heather Beam?

5 Q Yes.

6 A I think she was -- she had  
7 responsibilities in the early part of the  
8 EDR process.

9 Q And if Caryn hadn't started an  
10 EDR process, do you know who had started an  
11 EDR process?

12 A I don't understand that question.

13 Q Sure.

14 At the time Caryn reached out to you, I  
15 believe you said that she had not started an  
16 EDR process.

17 A Correct.

18 Q And, indeed, you had advised her to try  
19 to resolve the -- her concerns informally --

20 A Right.

21 Q -- before going down that formal  
22 process; is that correct?

23 A Right. Yeah, that's what I recall.

24 Q And at that time, she had no awareness  
25 of any ongoing EDR investigation?

1           A       About -- you mean in her case?

2           Q       In her case.

3           A       No, I don't believe she did.

4           Q       Because she had not initiated that  
5 process; is that correct?

6           A       Right. That's my recollection.

7           Q       And you weren't aware of any ongoing  
8 EDR process at that time either; is that correct?

9           A       That's correct.

10          Q       And did you know that Tony Martinez had  
11 initiated a Chapter IX proceeding under the  
12 EDR Plan involving these allegations?

13          A       No, I don't think I did.

14          Q       And did you have any sense or knowledge  
15 that Caryn knew that?

16          A       If I didn't know it, I -- I don't think  
17 she would have known it, because she told me  
18 virtually everything that she thought was relevant  
19 to her case.

20          Q       Thank you.

21                   And so none of the activities or  
22 conduct or steps that your office took or you took  
23 could possibly have been interfering with or  
24 intended to interfere with an EDR process?

25          A       No, absolutely not.

1           Q       Thank you.

2                   And I believe you said earlier that you  
3 did not have any contact with Tony Martinez after  
4 Caryn contacted you; is that correct?

5           A       That's correct. I have no recollection  
6 about either talking to or otherwise interacting  
7 with Tony Martinez.

8           Q       Great. Thank you.

9                   I want to talk for a moment about  
10 Heather Beam.

11          A       Yes.

12          Q       Okay. My understanding from your  
13 testimony is that there were at least two calls  
14 between you or Amaal and Heather Beam?

15          A       Yes.

16          Q       In one of those calls, it sounds  
17 like -- as though Heather reached out to your  
18 office or to Amaal; is that correct?

19          A       Correct.

20          Q       And can you tell me why she reached  
21 out?

22          A       I think she was asking Amaal, you know,  
23 some process questions, and -- and I believe, to  
24 be -- to be clear, I believe that Heather was, in  
25 essence, the EEO counselor in the EDR process,

1 similar to what takes place in the executive  
2 branch and in the AO.

3 So she -- I believe she was taking  
4 information and creating a report that would --  
5 would basically start the process.

6 Q For those of us who aren't quite as  
7 steeped in this, can you explain exactly -- or a  
8 bit more about what that office -- or her role  
9 would be?

10 A Well, an EEO counselor in the federal  
11 executive branch and in -- in cases with the  
12 AO would be the very first step in initiating a  
13 complaint.

14 You cannot file a complaint without  
15 going to an EEO counselor first, and I believe  
16 that was Heather's role in the early part of this  
17 process.

18 Q So Heather's role was similar to the  
19 EEO counselor in the executive branch -- in the --

20 A I believe that is correct.

21 Q And in that capacity -- and then she  
22 also became the Chapter IX investigator in the  
23 investigation; is that correct?

24 A I think that's correct, but, again, I  
25 had very little interactions with her other than



1 those two phone calls early on in the process.

2 Q Would -- in the executive branch --

3 A And, in fact, I was not a part of the  
4 first phone call, that was Amaal, and then I had  
5 very little interaction with her other than that  
6 one call that Amaal and I were on together with  
7 Heather.

8 Q And is it normal for the EEO counselor  
9 or person in that initial role to subsequently  
10 serve as the investigator of the complaint?

11 A Typically, I don't think that happened.

12 I mean, in -- in -- at EEOC, in the  
13 federal executive branch, in our AO process for  
14 AO employees, typically the EEO counselor begins  
15 the process, but you -- the process of  
16 investigation is done by a trained  
17 EEO investigator, and I don't know that I've ever  
18 seen a situation where the EEO counselor served as  
19 the investigator.

20 Q So that would be very unusual?

21 A I think that it -- I've never seen it.

22 Q And would it be concerning if it  
23 occurred?

24 A No, I can't say it would, but I just --  
25 it's very unusual.

1 Q Understood.

2 Okay. In that first call with Amaal  
3 and Heather Beam, do you know what Amaal told her,  
4 told Heather?

5 A I only recall slightly that Amaal came  
6 to me and said I received a phone call from this  
7 person, and I believe this person may be involved  
8 in the Charlotte case, meaning Caryn Devins  
9 Strickland's case.

10 And so Amaal thought that, you know, we  
11 should discuss that with Heather since I had been  
12 involved with talking to Caryn.

13 Q So Amaal did not disclose that during  
14 the conversation?

15 A I don't think she did in the beginning,  
16 because she didn't know that that's what the  
17 situation was. I think when she and I talked  
18 about it, then she realized, oh, yes, that's --  
19 that's the Charlotte case Nancy's been working on.

20 Q So at this point, did you know that  
21 Heather was the investigator?

22 A I think at that point, I knew Heather  
23 was the EDR counselor --

24 Q The EDR counselor in that she --

25 A -- which -- which has some informal

1       investigatory role.

2               Q       Got it.

3                       And is that a -- is that EEO counselor  
4       with respect to Chapter X of the EDR, or is it  
5       just general?

6               A       I'm not sure.

7               Q       Okay. Thank you.

8               A       I'm not sure. I don't recall any  
9       longer the chapters in the EDR process, but I do  
10      know that early on in the process, an EDR --  
11      EDR counseling is done, and I believe that Heather  
12      was that person.

13              Q       And there was no -- in your impression  
14      or understanding, there was no EDR process going  
15      on at that point that you were aware of?

16              A       Not formal, because the -- the  
17      complaint process sort of triggers the formal  
18      complaint.

19              Q       Understood.

20              A       The -- the counseling aspect is an  
21      early informal part of how one handles an  
22      EDR complaint.

23              Q       And in that second conversation you  
24      described --

25              A       Yes.

1           Q       -- where I think you said you discussed  
2 all of these issues, what was said during that  
3 conversation?

4           A       Well, again, I believe that we informed  
5 Heather that the matter she had talked about with  
6 Amaal was also something that had been brought to  
7 my attention by the employee and that I was  
8 working with AO managers and others on how to  
9 assist in the case.

10          Q       And was there anything threatening  
11 about the call?

12          A       I didn't think there was.

13          Q       Did you or Amaal give any directives to  
14 Heather Beam?

15          A       Never, and we had no authority to give  
16 directives to a judiciary employee.

17          Q       Did you give any ultimatums to Heather  
18 Beam?

19          A       I did not, nor did I hear Amaal do any  
20 such thing.

21          Q       Was there anything out of the ordinary  
22 about that call?

23          A       I don't believe so.

24          Q       Thank you.

25                   And did you ever talk to Tony Martinez

1 about that call?

2 A No.

3 Q Did you ever talk to J.P. Davis about  
4 that call?

5 A No.

6 Q Okay. Thank you.

7 Did you ever have any contact or  
8 communication with James Ishida about this case?

9 A I cannot recall. He could have been  
10 involved with a call between the Office of General  
11 Counsel and Lee Ann Bennett and me, but I have no  
12 specific recollection of that. It's something  
13 that could have happened.

14 I mean, typically, we would often get  
15 on the phone with -- with people who were in a  
16 position of authority when there was a case of  
17 discrimination or harassment being alleged, and I  
18 knew James Ishida, but I -- I -- it could have  
19 happened. I don't recall it.

20 Q So you knew James Ishida some?

21 A Yes.

22 Q Did he ever ask you if you were Caryn's  
23 friend?

24 A No.

25 Q Did he ever ask you if you tried to

1 obstruct this investigation?

2 A No. As I mentioned, the e-mail that  
3 the Department of Justice showed me -- I think you  
4 showed me maybe -- was the first time I had ever  
5 seen those concerns by James Ishida.

6 Q And how did you know James Ishida?

7 A Well, I regularly interacted with  
8 circuit executives in all the circuits. We went  
9 to training with them, we -- when there was an  
10 issue they needed advice on, they would often call  
11 me directly, and so I knew of him.

12 James Ishida also at one point sued the  
13 Department of General Counsel at the AO, so I was  
14 made aware of that situation. So he was sort of a  
15 notable individual.

16 Q Why did he sue?

17 A I can't remember, but there was a case  
18 that he was involved with where he sued general  
19 counsel based on how they had handled that case,  
20 which I didn't think he was entitled to do, but  
21 that was the reason it was sort of notable because  
22 it was out of ordinary to sue -- sue your own  
23 general counsel's office.

24 Q Okay. Why do you think he would not  
25 have reached out to you to verify this allegation

1 about you?

2 A Well, I -- I suspect he would have  
3 known what I would say.

4 Q And what is that?

5 A Well, they were very damaging  
6 accusations, and I would expect that I would have  
7 been upset had I heard about it.

8 Q And did you know Chief Judge Gregory?

9 A No, I did not. I don't think I've ever  
10 had any direct contact with him.

11 He could have been at a conference that  
12 I was at, but I -- I don't recall ever speaking to  
13 him.

14 Q So he didn't ever reach out to verify  
15 or check on these allegations?

16 A No, not with -- not with me.

17 Q And you don't know if Ishida ever  
18 corrected these allegations to Chief  
19 Judge Gregory?

20 A I do not.

21 Q You said at the end of your testimony  
22 this afternoon with Ms. McMahon that you didn't  
23 have any reason to doubt that the investigation  
24 and EDR process was being done in an appropriate  
25 way at the time.

1 Do you recall saying that?

2 A Yes.

3 Q Was there a time where you did have --  
4 did come to have concerns?

5 A No, I can't say that I ever reached  
6 that conclusion. Again, I -- I left the agency at  
7 a time period that this would have been still very  
8 early on in the process, and so I -- I can't say  
9 any more than what I've said.

10 Q Thank you.

11 MR. GERSEN: I want to thank you very  
12 much for your time and your candor and being with  
13 us this afternoon, and it was very nice to meet  
14 you.

15 THE WITNESS: You too.

16 I do need to -- you asked me to forward  
17 the e-mails from the DOJ lawyers to me asking me  
18 to be a part of this deposition, and I want to  
19 make sure, first of all, that Maddie does not have  
20 any objections to my doing so, and then I -- if  
21 not, then I need your e-mail address.

22 THE REPORTER: Am I still on the  
23 record?

24 MR. GERSEN: I think we can --

25 THE WITNESS: Yes.



1 MR. GERSEN: Yes, this is still on the  
2 record.

3 MS. McMAHON: We have no objection.

4 THE WITNESS: Okay. Thank you, Maddie.

5 MR. GERSEN: Thank you.

6 THE WITNESS: Okay. So your e-mail  
7 address, Professor Gersen?

8 MR. GERSEN: Is jacob.gersen,  
9 G-E-R-S-E-N --

10 THE WITNESS: Uh-huh.

11 MR. GERSEN: -- @gersen.com.

12 (The Reporter clarified the record.)

13 THE WITNESS: Okay. I'll send those  
14 later.

15 THE REPORTER: Ms. McMahan, do you have  
16 any other questions?

17 MS. McMAHON: We don't, no.

18 (Discussion off the record.)

19 THE REPORTER: So, Ms. McMahan, do you  
20 need regular delivery or expedite?

21 MS. McMAHON: I think expedited  
22 delivery, please.

23 THE REPORTER: When would you like it?

24 MS. McMAHON: What are the options?

25 THE REPORTER: You can get it in five

1 business days, four business days, three business  
2 days, two business days.

3 MS. McMAHON: Five business days would  
4 be great.

5 THE REPORTER: And, Mr. Gersen, do you  
6 need a copy of the transcript?

7 MR. GERSEN: Yes, please.

8 THE REPORTER: Do you need regular  
9 delivery or expedite?

10 MR. GERSEN: Do we need regular? I  
11 think we need -- I don't think we need expedited.  
12 I think regular should be fine.

13 (Discussion off the record.)

14 AV TECHNICIAN: Would you like the  
15 exhibits attached to the transcript?

16 MS. McMAHON: That's not necessary for  
17 us.

18 AV TECHNICIAN: Okay.

19 MR. GERSEN: Or for us.

20 AV TECHNICIAN: Okay. Thank you.  
21 That's all I need.

22 (Off the record at 8:09 p.m.)  
23  
24  
25

ACKNOWLEDGMENT OF DEPONENT

I, NANCY DUNHAM, do hereby acknowledge  
that I have read and examined the foregoing  
testimony, and the same is a true, correct  
and complete transcription of the testimony  
given by me and any corrections that appear  
on the attached Errata Sheet signed by me.

\_\_\_\_\_  
(DATE)

\_\_\_\_\_  
(SIGNATURE)

1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2 I, Marney Alena Mederos, the officer  
3 before whom the foregoing deposition was taken, do  
4 hereby certify that the foregoing transcript is a  
5 true and correct record of the testimony given;  
6 that said testimony was taken by me  
7 stenographically and thereafter reduced to  
8 typewriting under my direction; that reading and  
9 signing was requested; and that I am neither  
10 counsel for, related to, nor employed by any of  
11 the parties to this case and have no interest,  
12 financial or otherwise, in its outcome.

13 IN WITNESS WHEREOF, I have hereunto set  
14 my hand and affixed my notarial seal this 23rd day  
15 of April 2023.

16 My commission expires November 23, 2024

17  
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19 \_\_\_\_\_

20 NOTARY PUBLIC IN AND FOR  
21 THE STATE OF MARYLAND  
22  
23  
24  
25